



# A SURVEY OF INDIAN CONSTITUTIONALISM

BY

P. RAJESWARA RAO

*Librarian*  


FOREWORD BY  
DR. PATTABHI SITARAMAYYA





**A SURVEY OF INDIAN CONSTITUTIONALISM**

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# A SURVEY OF INDIAN CONSTITUTIONALISM

BY

P. RAJESWARA RAO

*Advocate*



WITH A FOREWORD BY

DR. B. PATTABHI SITARAMAYYA

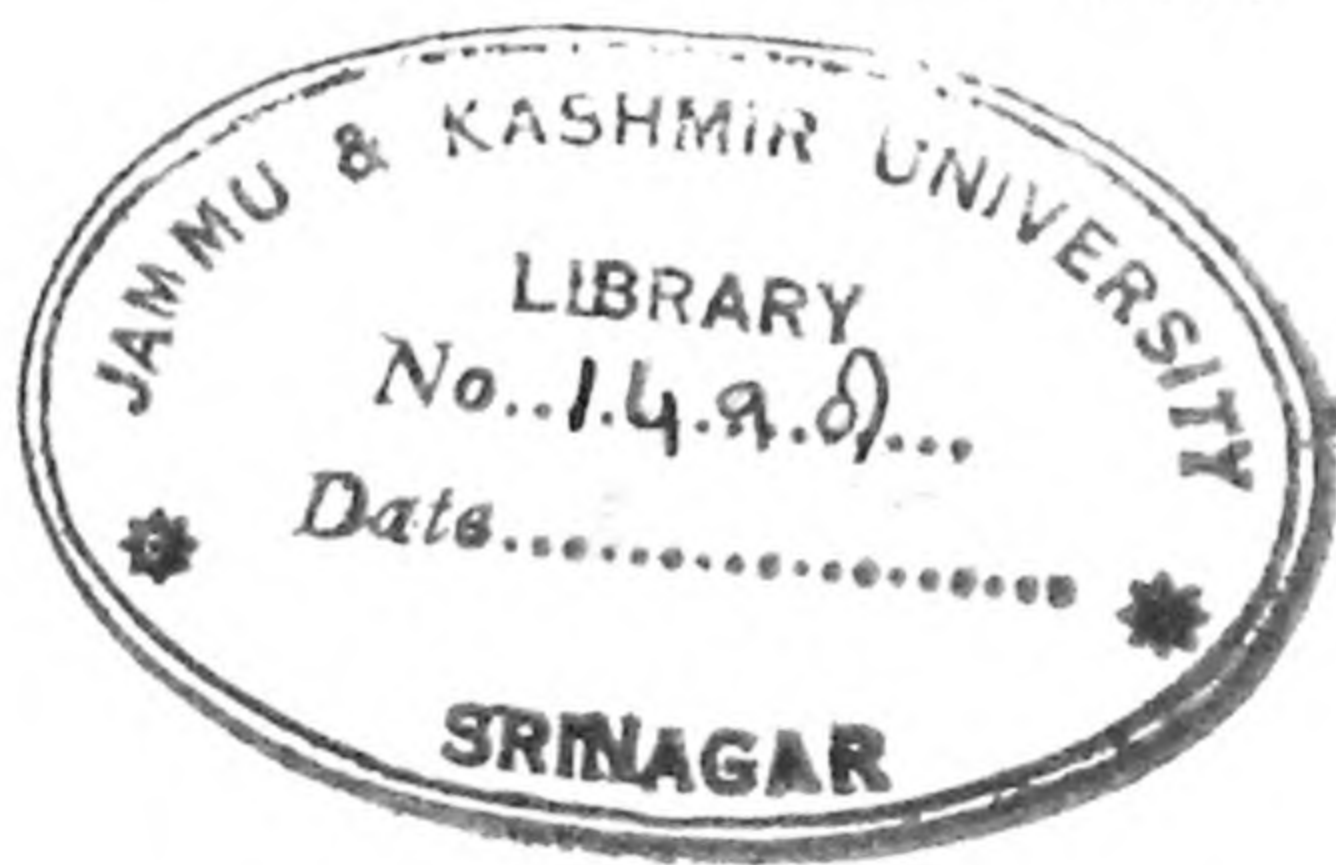
President, Indian National Congress

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To  
My Master  
Dr. SACHCHIDANANDA SINHA



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## FOREWORD

CIVILISATION is the state in which proper interrelations develop between a people and those whom they set up as their representatives to exercise delegated authority over themselves. The sheep instinctively follow their leader even to be run over by a motor car or a train in motion. The buffaloes in the forest are easily able to give fight to a tiger through their chosen head. The birds of the air arrange themselves in serried ranks and fly as their leader directs. The leader is perhaps the oldest among the birds of the air or the beasts of the field. In man the tribal stage already shows indications of command and obedience. Gregariousness naturally necessitates and engenders leadership. The tribe leads to the clan and that means that one particular clan and in it one particular individual becomes *primus inter pares*. 'The choice of the first among equals' is a necessary feature even



amongst little children who have gathered on the play fields of the village or in the halls of the homes.

How is such leadership determined? Is it born or made or thrust? It is thus that some are born great, some become great, while greatness is thrust on some. But the one feature that lies at the back of all, is that there is acquiescence by the many in the priority of place assigned to the one. Thus may leadership be hereditary as in Kingship or acquired as in Presidentship. Even the former passes through a semblance of approval as in coronation of Kings, while such approval in respect of the latter is a prior event through election.

But whether acquired or inherited, one cannot function always and everywhere, unless one delegates one's authority to nominees who work on remuneration or honour. So comes into being a whole organization permanent or periodical, paid or honorary, so are born individuals and institutions which exercise authority in the name of the Leader call him *King* or call him *President*, for the common good of society and the supreme well-being of the individual. So comes into being



the State with its Estates, the King or President and the Parliament or representatives of the people. As Parliament gets stronger, the head weakens in legal or physical power but grows in moral influence. The King or President is the head in whose name all writs run. He acts under the authority of law. That still leaves society as a second sanction which acts through public opinion voiced forth by the Press and through the individual acting always on his own.

Society itself divides social duties into different spheres, – those that are the supreme concern of the individual and therefore regulated by conscience, those that are the primary concern of the people and are therefore controlled by public opinion and finally those that are under the supreme care of the State through Law or *Dharma* which is the G. C. M. of public opinion and individual conscience. Thus has civilization grown sometimes and in some places on a competitive basis, at other times and in other climes on a co-operative principle. Today we witness the displacement of the latter by the former in India. Science has brought the people of the world nearer but rent asunder their hearts and flung them afar from one another.



The growth of the Indian Constitution is not a novel feature of modern history. She has had an orderly government for thousands of years. The choice of the king was a feature of polity so early as in the Vedic age. The times of Chandragupta witnessed the development of Local Self-Government. The best Revenue administration was inaugurated and perfected in the time of Akbar by Todarmull. The British period began the work of reconstruction of Indian polity afresh from foundations and plinth upward. At first the British ruled the country through the scions of her rich families. Later she established Local-Self-Government in 1883. Next she admitted a small elected element in 1891 into the Legislatures which had been founded in 1860, expanded them in 1909 and 1919. The Ministers introduced for the first time in 1921, were picked up from the Zamindars of India. They gave place to middle-class Congressmen in 1937. Now comes adult franchise with 17 crores of voters for a population of 30 crores as against the prevailing strength of 3½ crores of voters over a population of 39 crores (India before partition). Adult franchise will usher in a new era of real democracy, overthrow vested interests

and pave the way for a classless society ultimately.

The story of the evolution of popular institutions and people's power is one of perennial interest and these pages narrate the story lucidly and interestingly. The young author has a real grip of the subject and feels at home in tracing the currents of progress as they coursed along from the rugged rocks of bureaucracy and flowed through the glen and forest of plutocracy on to the plains of middle class life until they have their confluence with the ocean flood of popular rule through adult franchise. We need such books at the present day as aids to adult and adolescent education and for purposes of nondetailed study.

B. PATTABHI SITARAMAYYA



## P R E F A C E

THE publication of this monograph has had a chequered history. When the Madras Bar Council invited me to deliver a course of lectures on INDIAN CONSTITUTIONSLISM during 1947, I did not even imagine that it would provide the nucleus for this book. My modest attempt was well-received. After perusing the text of the lectures, Mr. N. Gopalaswamy Iyengar, the constitutional expert, kindly indicated the lines on which I should revise the manuscript before it could be published in bookform. I resisted all attempts by friends to hasten the publication as the situation was rapidly changing from day to day. The delay in passing the New Constitution became another obstacle as I wanted to incorporate a running commentary on the same. I had to wait nearly for an year after the portion dealing with the developments upto the dawn of Freedom was printed.

The portion dealing with the developments since the dawn of Freedom merely grew without much effort on my part. Major part of it appeared as articles in the 'Modern Review', 'Indian Review', 'New Review', 'Triveni' 'Federal Law Journal' and attracted attention. While admitting the substantial truth in the statement that political history tends to become the stepping stone to constitutional development, I wish to make it clear that it is far from my intention to survey the subject from one particular angle and become merely political if not propagandist. I endeavoured to avoid unwarranted expressions of animosity and prejudice. If at all any where it is pointed at any one or anything even casually, it ceases to be a survey to that extent and be no more a guide to citizenship. I dare not lay any claim to balanced and mellow criticism, which is fast disappearing by reason of the present increase in the tempo of life. Our estimate of men and matters, unfortunately, tend to become epigrammatic, assured and conclusive. Further it is easier to pronounce unfavourable verdicts than to understand and appreciate the favourable aspects of the second best. Readers alone can testify the objectivity and academic level displayed in the treatment of the subject.



I sent advance copies of the printed stuff for the perusal of the President of the Indian National Congress and a few other eminent persons. The warm reception encouraged me to proceed with confidence. I am highly obliged to Rashtrapathi Dr. Pattabhi Sita-ramayya for writing the FOREWORD in spite of his being busy with various duties and responsibilities of utmost public importance. I am also grateful to Sir C. P. Ramaswamy Iyer, Mr. P. R. Das, Hon'ble Mr. G. V. Mavalankar and Prof. N. G. Ranga for their appreciative estimate which is more generous than just.

I will be failing in my duty, if I do not express my deep debt of gratitude to the late Rt. Hon'ble Sir Tej Bahadur Sapru, the doyen of our publicmen and Nestor of India. Whenever I referred my doubts and difficulties that arose in the course of study of the constitutional problems during the last decade or more, he readily enlightened me with the warmth of a friend, the exactitude of a guide and the serenity of a philosopher. He literally placed at my disposal his extensive and profound knowledge and ripe experience. Even ill-health, advancing years and the incidental infirmities

did not interrupt our correspondence. His last letter to me was dated 4 . 1 . 1949. A fortnight hence the Nation had to mourn his passing away from mortality to immortality. I very much regret that I could not submit the result of my studies in the form of a book for his perusal.

I owe my interest in cultural and constitutional pursuits entirely to the inspiration and encouragement of my master Dr. Sachchidananda Sinha, the veteran publicist and non-party nationalist. But for his sympathetic interest in me, I would have given up the habit of writing long ago. As a mark of my respectful regard, I am dedicating this work to him.

My friend Mr. A. Naga Gopala Rao, Member of the Indian P. E. N., kindly supervised printing and get-up of the book. I must at least appreciate, since he does not like to be thanked for, the trouble he has taken as a labour of love.

*Eluru*  
*West Godavari*  
*1st February, 1950*

P. RAJESWARA RAO



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## Chapter I

### INDIAN CONSTITUTIONALISM

CONSTITUTIONALISM usually implies a government under law, through law and in conformity with law. According to Woodrow Wilson, "A constitutional government is one whose powers have been adapted to the interests of the people and to the maintenance of individual liberty." In the opinion of Prof. C. J. Friedrich, "The presence of effective restraints on political and governmental action is the essence of constitutionalism." But it functions differently in different countries and organisations. Its course may change from region to region and period to period. We cannot say that particular course is wrong. We can only say that it is different and distinct. A close study of the vicissitudes of constitutionalism in a country spread over its long history will be conducive to better understanding and improvement.



Unfortunately things have come to such a pass that it requires very great effort to believe even when sufficient evidence is forthcoming that institutions which we are accustomed to look upon as of Western growth flourished in India. Hence it is not surprising that reactionary observations of Westerners like Lord Meston to the effect that isolated republican states seem to have disappeared before the Christian era and certainly during the period of conscious history and that there is neither record of democratic institutions nor traditions of elective government, gained support by the remarks of progressive Indians like, S. Srinivasa Iyengar, namely that in the ancient Hindu State the potent conception of *Dharma* either rendered unnecessary or prevented active development of popular government and the state in early India did not mean a political state as we understand it. To make matters worse the dictum of the great orientalist Max Muller, that India had no place in the political history of the world, which was justified at the time of its pronouncement, nearly ninety years ago, by the darkness in which the history and literature of ancient India were still enveloped is still quoted at the present day, when immense

strides have been made in almost every branch of Indian antiquity.

Another target of attack is the caste system and the incidental discrimination in the Indian polity. But historically speaking constitutionalism like any other progressive movement in society emerged and grew under the creative leadership of an enlightened, gifted and inspired minority. This minority with altruistic motives introduced the caste system which according to Dr. Ananda Coomaraswamy was the nearest approach that has yet been made towards a society, where there should be no attempt to realise a competitive equality, but where all interests were regarded as identical. Under this system one was respected not for what he had but for what he was. It was the antithesis of plutocracy. A society can only be considered truly civilised when it is possible for every man to earn his living by the very work he would rather be doing than anything else in the world—a condition that has been attained in social orders integrated on the basis of vocation, *Swadharma*. Democracy is not standardising of everyone so as to obliterate all peculiarity. Freedom consists in making the best of what we have, our parentage



physical capacity and mental gifts. Evidently “The institution of caste illustrates the spirit of comprehensive synthesis characteristic of the Hindu mind with its faith in the collaboration of races and co-operation of cultures” as Dr. S. Radhakrishna aptly put it. Later the minority losing the faculty to inspire confidence in their creativeness and evoke loyal adherence to their lead attempted to remain in power by force. Though they lost their merit they did not abandon their position, on the other hand they became a dominant minority and set up resentments and tensions. Thus we find that the caste system gradually developed into an instrument of oppression and intolerance and fostered exclusiveness. Even then without defending this discrimination in anyway it can be said without any fear of contradiction that the discrimination was less harsh and more humane than that which existed between the Jew and the Gentile, Hellenese and the Helots the Roman and the Barbarian, the Christian and the Pagan, the Muslim and the Kafir, the White and the Coloured.

How elastic, Hindu polity was can be seen from the contributions of K. P. Jayaswal. He referred to the establishment of a republic in

Bengal and election of a Sudra as king, who ruled for seventeen years before Gopala, the founder of Pala dynasty was elected King. The great Chanakya thought it fit to enthrone Chandragupta (son of Mura, a Sudra woman) at Pataliputra. Similarly the Reddy and Velama dynasties in Andhra efficiently and benevolently ruled over a great part of the country for longer periods.

On a careful analysis we find that constitutionalism in India has a unity of its own if the material available be constructively used. The Indian system made for localism variety and flexibility. On the whole the political philosophy and constitutional tradition are broadly based on democratic foundations. The motto is one of live and let live of tolerance and of toleration and above all realisation of unity in diversity. Therefore the early Christians Arabs, Jews and Parsis found a happy and hospitable asylum in India. Under these circumstances the audacity to say that Indians are essentially undemocratic betrays lamentable lack of understanding and commonsense.

Our constitutionalists in the past were well versed in the methods and forms that are regarded as newer and fresher by us. We



should be proud of and be grateful to our forefathers for what they were and for what they have bequeathed to us. Our life and culture would have been poorer but for their contribution. The legacy is not to be valued in terms of our present existence.

## Chapter II

### PREHISTORIC AND VEDIC AGE

IN spite of the ravages of time and nature and the vandalism of man, the relics at Mohenjadaro go to prove the existence of a highly advanced type of civilisation and government even before the advent of the Aryans. The impression these relics give us is of practical minded people enjoying life that had a democratic flavour. Mahenjadaro was evidently a planned city. The architecture is plain and utilitarian but of a high order. They aimed at a high standard of urban life and amenities as seen in the commodious houses, court yards kitchens wells and systems of drainage meant for the ordinary citizens and not known in prehistoric Egypt or Mesopotamia or any other country in Western Asia where archite-

cture was chiefly aristocratic being marked by magnificent palaces, temples and tombs without much thought for the dwellings of the poor. But at Mahenjadaró, the common man was provided with well planned roads, buildings, parks and tanks symmetrically situated and geometrically constructed with an underground drainage. From this well ordered state this evidence of clear thinking and careful organisation, it is arguable, though not definite or certain, that such a high level of all round material advancement must have flourished under a democratic or at least a popular form of government.

The rule of law forms the basis of ancient Hindu jurisprudence, though the expression may not have exactly the modern significance. According to *Aitareya Brahmana* (quoted by K. P. Jayaswal) the Kingship in its origin was elective. The *Atharva Veda* has several passages indicating that the people chose their kings. The king on his part was anxious to secure the people's support and loyalty. The king-makers according to the *Atharva Veda* and the *Taittiriya* include the bard, chariot-maker, artisan, village-headman, Rajah's kinsmen, the priest, the chief queen, even



discarded wives of the king, the commander-in-chief, the collector of taxes, the treasurer etc. The electorate is indeed wide and varied. The *Rigveda* emphasises the fact that the concord between the king and the *Samiti* is essential for the prosperity of the realm. There is also a prayer for the unity of policy, mind heart and endeavour between the king and the assembly. In the Vedic tradition there is no theory of divine right of kings but only an attribution of divine virtues to kings by means of prayers. According to *Sukraniti* only a righteous king was regarded as divine and the king was not a *Devata* but a *Naradevata*. In the Vedic and the Brahminic literature the Aryan monarch figured as a Kshatriya paid by a tax for protection of property and person. According to the *Mimamsa Sutras* of Jaimini the king had no power over land in occupation and was entitled to only one sixth of the produce. Conclusive evidence is furnished by the *Aitareya* and *Taittiriya Brahmanas* of the existence of republics during the Vedic Period.

The ritual at the coronation is also significant. The king - elect is required to seek the approval of the earth. Then the following offerings are made to the respective deities:-

Agni-grihaspati :	for mastery of the household
Soma-Vanaspati :	for protection of forests and agriculture
Brihaspati :	for power of speech
Indra-Jyeshtha :	for pre-eminence in admi- nistration
Rudra-pasupati :	for protection of cattle
Mitra-Satya :	for truth

The ritual ended with an offering to Varuna-Dharmapati which brings out the true character of the king as upholder of *Dharma* or law. The Hindu theory regards *Dharma* or law as the real sovereign and the king as *Danda* or the executive to support and enforce *Dharma*. The offerings symbolise the manifold qualifications and obligations of a sovereign.

Next comes the sprinkling of water collected from different sources, namely the river Saraswati, the sea, a whirl pool, a flood, a well and even a stagnant pool etc. Here Saraswati symbolises speech, the flowing river vigour, the flood stood for plenty, the sea for domination and the pond for the loyalty of the people to the king, which should be steady and harmless like the waters of a stagnant pool. The sprinkling is done by a Brahmin



Kshatriya and a Vaisya representing the three estates of the realm. The King must uphold religion, law and truth and finally take the following oath:—

“If I play false, may I loose the merit of religious performances and gifts, of my good deeds, my place, my life and even progeny”. In the *Anusasanaparva*, Bhishma observes that the king who tells his people that he is their protector but does not actually protect them should be slain by his subjects like a mad dog afflicted with rabies. From Bana's *Harsha-charitra* we find that Brihadratha, the last Mauryan Emperor was crushed because he was weak in keeping the coronation oath (*pratignadurbala*). In the Vedic and the Brahminic literature the Aryan monarch figured as a Kshatriya paid by a tax for protection of property and person. No doubt, later on in order to protect and revive the Hindu *Dharma* it became necessary to devise a new theory of theocratic monarchy.

The role of the *Sabhas* and the *Samitis* also is note-worthy. They functioned as parliaments for disposal of public business by debate. Eloquence and debating skill were greatly valued. There is a prayer that one may speak

agreeably to those assembled, that the members of the *Sabha* be of one voice, with the speaker, that the speaker may hold the *Sabha* spell-bound by drawing into himself the enlightenment and wisdom of all its members that the attention of all the members of the *Sabha* may be rivetted on one's speech, the delight of all. There were also rules of debate. Decision by the vote of the majority was known which Sayana explained as inviolable, not to be overridden because in the *Sabha* the many meet and speak with one voice which is binding on others. The power of the king was much restricted by the council which, some times with him and some times in his absence initiated legislation, regulated national finance and foreign affairs and appointed all the important officers of the state.

Lastly *Sabhas* seem to have functioned as courts of justice like the House of Lords. There is a passage in the *Rigveda* which refers to a person returning from the *Sabha* in joy being acquitted of blame. The *Sabha* is also named as a source of sounding and shining. The sound is due to the proclamation of the justice and the blaze to the fire kept in the courts for ordeals.



## Chapter III

### PURANIC AND THE BUDDHISTIC ERA

COMING to concrete examples we find that when King Sagara died the public elected pious Amsuman as their king. Further the people exercised effective control over the king through their assemblies styled *Samiti Sabha* or *Mantra Parishad*. When Dasaratha wanted to instal Rama as king, he called an assembly of representative people, made the proposal to them and accepted their decision. Again after the death of Dasaratha as Rama was in the forest, the Royal priest Vasishta installed Bharata on the throne at the request of the people. King Yayati had to request his people and satisfy their objections when he wanted to instal his youngest son as king superseding the eldest. Again when King Pradipa wanted to instal his eldest son Devapi on the throne, people objected on account of his skin disease. Santanu, another son, was

made king.

We are told in the *Udyogaparva* of the Mahabharata that the Gods do not approve of a defective king. The blind Dhritarashtra was passed over in favour of his younger brother Pandu. On the death of Pandu the sceptre temporarily went to Dhritarashtra. But the question of succession came to the fore when Yudhishtara, the eldest son of Pandu attained majority. Sometimes people practically elected the king. Thus in the *Adiparva* all the people chose Kuru son of Samvarana to be the King. Again Janamejaya though a mere boy was elected by the united voice of the people. In spite of the recognition of the hereditary succession and primogeniture, a king had to be formally accepted by the people. In the *Sabha Parva*, Narada advised that a king should constantly consult his ministers. The *Shanti Parva* emphasises that the king should explain the situation to the people and then levy extra taxes. In the *Bhishma Parva*, Dhritarashtra is blamed for refusing to listen to Viduru, Bhishma, Drona and Sanjaya. According to the *Shanti Parva* the state should ceaselessly foster righteousness guide, correct and control the moral life of



the people and make the earth habitable and comfortable. Here we are reminded of a saying of Aristotle that the "State comes into being for the sake of life ; but it exists for the sake of good life."

The Mahabharata in the *Santi Parva* speaks of the republican form of government called *Gana* i.e., sovereignty of the many as prevailing at that time and of a confederation of republics. There is mention of five republican peoples namely, the Andhakas, Yadavas Vrishnis, Kukuras and Bhojas who had formed themselves into a confederation (*Sangha*) under Krishna as the Federal President (*Sangha Mukhya*) upon whom depended their commonweal. Each of the constituent states of the confederation was however an autonomous unit under its own chief called Eswara. Something like the party system seems to have been in operation in the federal government. There was also a struggle for power among the party leaders. Those mentioned in this connection were Ahuka, Akrura, Gada, Pradyumna Sankarashana, Baladeva, Babhru and Ugrasena. All followed the leadership of Krishna except Babhru who organised opposition to him. Krishna had also sometimes to complain about

the loyalty of his own following. He told Narada that Sankarshana with his strength Gada with his virtues, Pradyumna with his attractive presence were leaving him helpless while all the power was being grasped by Ahuka and Akrura leaving him unsupported against Babhru. Narada advised Krishna to rise to the responsibilities of his position as the president of the whole federation and save the *Sangha* from the internal dangers of disunion to which republics succumb.

Kautilya's *Arthasastra* which is indeed an authoritative work on political economy contains reference to *Mantraparishads*:-“Sovereignty may belong to a clan. For a republic consisting of clans as the political unit (*Kulasangha*) is hard to conquer and being free from the danger of anarchy, enjoys permanent existence on earth.” This tribute coming as it does from the arch apostle of the monarchic cult shows him to be not a blind advocate of monarchical rule. “By upholding the law” says the *Arthasastra* “the King becomes the realm sustainer.” The *Brihadaranyakopanishad* emphasises the idea of law being the king of kings. Banishment or degradation of kings was one of the constitutional devices frequently



adopted for the prevention of extravagant proceedings, gambling and other vices.. The procedure adopted was peaceful, in contrast with the violent and bloody revolution accompanied by horrible destruction of property and person.

The *Kathaka Samhita* mentions an *Atmamedha* also called *Prayopavesa* or vow of fast unto death on the part of the people till the removal of their grievances. From Kalhana's *Rajatarangini* it appears that the kings of Kashmir used to send spies to find out and report voluntary cases of *Prayopavesa* and redress such grievances. Mahatma Gandhi's fasts unto death for redress of grievances seem to have constitutional sanction in ancient India. This poet historian of Kashmir compels us to admire the ways in which some of the then rulers respected and in fact guaranteed the civil rights and personal liberties of their people.

In the Buddhistic literature, the king is described as *Ganadasa* or servant of the *Sangha*. There were a number of republican states at the time of Gautama Buddha. The various Buddhist *jatakas* which belong to the sixth and the seventh centuries B. C. contain detailed descriptions of the procedure adopted by the

Buddhist *Sanghas* which was an adaptation of the procedure of the deliberations in the Hindu Republics. Motion, Resolution, quorum Ballot voting, the procedure of majorities reference to committees are mentioned in the Buddhist literature without any definition, that is as terms already current. In this connection the following quotation from Lord Zetland's book *The legacy of India* is illuminating:—

“It may come as a surprise to many that in the Assemblies of the Buddhists in India two thousand years and more ago, are to be found the rudiments of our parliamentary practice of the present day. The dignity of the Assembly was preserved by the appointment of a special officer - the embryo of the Speaker in the House of Commons. A second officer was appointed whose duty it was to see that when necessary a quorum was secured the prototype of the parliamentary chief whip in our own system. A member initiating business did so in the form of a motion which was open to discussion. In some cases it was done once only, in others three times, thus anticipating the practice of parliament in requiring that a Bill be read a third time before it becomes law. If discussion disclosed a difference of opinion



the matter was decided by the vote of the majority, the voting being by ballot." A cursory view captured from the fleeting past clearly shows that even in the sixth century B.C. the features of a highly developed stage marked with technicality and formalism in language with underlying concepts of legalism and constitutionalism of the most advanced type obtained. This presupposes experience extending over centuries.

## Chapter IV

### MEDIEVAL AND MOGHUL PERIOD

WE know of forty villages during the reign of the Chola Emperor Raja Raja (985—1013 A. D.) in which the villagers as a body managed their affairs. It was in public meetings that business was conducted. In the Urban areas of the Vijayanagar Empire guilds appear to have exercised enormous influence in municipal administration. Their consent was taken for the taxation policy of the government. They themselves levied certain customs and axes of a local character.

The *Nitisara* in Telugu written by Rudradeva, the Kakatiya Monarch (12th century) states that the King is persuaded to use all the power in his hands only to the best advantage of the people under his care. The power could not be arbitrary or tyrannical. That rights imply duties is not lost sight of by the author. The distinction between King's discretion and individual judgment is noted. Equality before law is also proclaimed. It is further stated that taxes are levied with a view to providing the people with as many facilities as possible for fairly good living.

There are also important inscriptions emphasising the democratic tradition in India. Inscriptions and other sculptural evidence cannot be easily dismissed, since they constitute frozen history preserved in all its pristine purity. An inscription in Kalimpur in the Malda district of Bengal says that Gopala the founder of the Pala dynasty was elected as king in the eight century. An inscription at Kasakudy near Karaikal says that Pallava king Nandivardhana was chosen by the people in the eighth century.

The central feature of the Indian polity was the village. The Hindu system had



never known the city state and treated the city as an accident. From the time of the Vedas the village was looked upon as a unit. The village exercised all the executive and judicial functions. We also find village committees and the union of villages. In spite of a series of invasions the villages remained uneffected. The role of the villages has been described by Metcalfe thus in a language that cannot be bettered : "Dynasty after dynasty tumbles down. Revolution succeeds to revolution Hindu, Pathan, Moghul, Maharatha, Sikh English, all are masters in turn but the Village Communities remain the same. In times of trouble, they arm and fortify themselves. A hostile army passes through the country. The Village communities collect their cattle within their walls and let the enemy pass unprovoked." No doubt various dynasties wielded unfettered power. But after their rule was sufficiently stabilised the general tendency was to lean towards democratic methods. Generally political tutelage begins after military consolidation and ultimately gives way to constitutional government. The continuance of a similar tradition is noticeable during the sway of host of dynasties during the medieval

period.

Though the Moghuls came as conquerors they ultimately settled down and became sons of the soil. Akbar liberalised the administration and gave equal opportunities to Hindus and Muslims. He won the affection of his people and respect of his enemies, had a high sense of honour and justice and was singularly free from sectarian prejudices and respected all religions. He was accessible to all. It needed all his great gifts and strenuous exertions during a long reign, to overcome the difficulties which former Mussalman governments had bequeathed to him, to exact a willing obedience to his rule from the great majority of his subjects and weld them into a nation. If his successors had emulated his noble example and kept up the tempo of progress, democratisation would have been the ultimate result. Then nobody would have dared to use the word Moghul as a synonym for an autocrat. Sardar K. M. Panikar in his survey of Indian History described Sivaji's *Ashtapradhan* council as the cabinet system of government. Further the success of the saintly Ahalyabai's internal administration is astonishing, seeing that she lived in an environment of unexampled anarchy. Ultima-



tely Indian polity crumbled when the village ceased to be a self-contained and self-sufficient unit. What is needed is a rediscovery of centre of gravity for the constitutional structure of India.

## Chapter V

### INDIAN IMPERIALISM AND FOREIGN POLICY

A brief reference to Indian Imperialism is not out of place in a survey of constitutionalism. If we should admit the imperial principle — that it is good for the sake of spreading law security, commerce and peace, that many states should be brought by persuasion or force under the authority of one government, then we should concede to India the distinction of having established in Asia a large measure of order and prosperity. We find that imperial traditions have had their place in Hindu polity from time to time. The assumption of titles like *Chakravarthi*, *Chatrapaty*, *Maharajadhiraja*, *Raja Raja*, *Samrat*, *Sarvabhouma* and the like the performance of *Rajasuya*, *Vajapeya*, *Aswamedha* and other ceremonies are indeed vestiges



of imperialism. The conception of paramount power and imperial sovereignty was current. The *Aswamedha* according to the *Apastamabha Srauta Sutras* was to be performed only by a *Sarvabhouma*. According to the *Gopada Brahmana* one became a Raja by performing the *Rajasuya*. *Vajapeya* was prescribed for *Samrat*, *Aswamedha* for *Swarat*, *Purushamedha* for *Virat* and *Sarvamedha* for *Saswarat*. The names of kings who by their conquests had achieved eligibility for these imperial inaugurations are preserved in the texts. In the Mahabharata the aspiration to create an Empire is hallowed into an imperative sacred duty.

In the *Sabha parva* of Mahabharata, Narada suggests to Udhishtara that conquests should be followed by earnest attempts at conciliation. Again in the *Ashramavasiparva*, Dhritarashtra says that a powerful king should never exterminate weak kings. Kautilya emphasises that a king who acquires new territory should adopt the same mode of living, the same dress and the same language and manners as his subjects and should participate in their congregational festivals and amusements. *Ramarajya* is the earliest and the nearest

approach to the ideal of Commonwealth.

The democratic tradition was successfully transplanted in the ancient Hindu colony of Champa i. e., the southern portion of Annam. At the death of the king, the council of ministers elected one as king or confirmed one chosen by the dead king. Sivananda was thus invited by the people to reign. According to a Chinese authority the Champa Kings gave audience to their subjects every day till noon.

The unqualified apology of Emperor Asoka to the Kalingas after the successful termination of the bloody war has neither a precedent nor a parallel in the annals of humanity. One cannot resist the temptation of quoting the following brilliant tribute paid to the Great Asoka by a scientific thinker like H. G. Wells in his *Outline of History*: "Amidst the tens of thousands of names of monarchs that crowd the columns of history, their majesties, gracious highnesses and serenities and royal highnesses and the like, the name of Asoka shines and shines almost alone, a star, from the Volga to Japan his name is still honoured. China, Tibet and India preserve the tradition of his greatness. More living men cherish his memory than have ever heard the names of Constantine



or Cherlemagne.”

The Hindu view of an international states system (*Mandala*) comprised a group of states varying from two to fifty four according to the different authorities, though the usually accepted number was twelve. The forms of diplomacy and foreign policy were arranged by the Hindu writers under four and six heads respectively, which were further sub-divided and as well as rearranged into composite types. Though the doctrine of neutrality might not have been developed to such details as after the eighteenth century, there is abundant evidence to show that in the Vedic and the Mouryan period the conception was well known. There is mention of *Udasina* (Neutrality) in the Rigveda and the Atharvaveda. During the Mahabharata battle, Balarama observed neutrality. The role of Krishna without wielding his *Chakra* (wheel) and Vidura without wielding the bow can be rightly styled as non-belligerency. Salya, the charioteer was a veritable fifth columnist. Kautilya distinguishes three kinds of international relations, namely:- *Vigraha* (War), *Sandhi* (Peace), and *Asava* (Neutrality as translated by Dr. Syama Sastry). He also classified rulers

under four heads viz.. *Ari* (enemy), *Mitra* (friend), *Madhyama* (mediatory) and *Udasina* (neutral).

In the epic period the word *Duta* was used generally for a diplomat. We find that Sri Krishna was sent by the Pandavas to the Kauravas for negotiations with the latter just before the outbreak of the War. In the *Mahabharata*, Bhishma says: "An envoy should possess seven accomplishments, viz. high birth, good family, eloquence, cleverness, sweet speech, good manners and faithfulness." The *Agnipurana* too insists that "The ambassador sent to represent a king at a foreign court should be a person of very sharp intellect, sweet voice, eloquence and well-versed in the arts of diplomacy." According to Manu an ambassador should be loyal, honest, skilful, possess good memory, know the proper time and place for action, be handsome, fearless and eloquent.

The person of a *Duta* was inviolable and he must on no account be killed. *Mahabharata* lays down that: "A king should never slay an envoy under any circumstances. The king who slays an envoy sinks into hell with all his ministers." *Nitiprakasa* supports the modern



sentiment by saying that even if an ambassador was guilty of a grievous wrong he could not be put to death. But certain recognised punishments were meted out to an offending envoy. Ravana for example gave the order for mutilation of Hanuman, for he was an ambassador and so could not be slain. While looking after the affairs of his country the ambassador has to discover the affairs of the country to which he is sent. *Agnipurana* expresses the opinion that "An ambassador is but an open spy."

In ancient India espionage was used not only for internal administration but also for external purposes like ascertaining the strength and weakness of the surrounding states. "A kingdom has its roots in spies and secret agents" says Bhishma in the *Mahabharata*. The *Kamandakiya* describes the spies, "Fleet as the wind and energetic as the Sun." In the *Sukraniti* it is stated that the king should examine the spies before appointment as to their capacity and honesty.

Spies were recruited from diverse classes of society and were classified by Kautilya in a meticulous manner. No distinction of caste creed or sex was observed in appointment of

persons for espionage. Cipher-writting was used by spies and pigeons were employed to convey secret intelligence. There was energetic counter espionage as well. At the same time the statement of a spy must be corroborated from three different sources. A spy could be slain if discovered. The immunities of diplomats did not extend to spies.

## Chapter VI

### REGIME OF THE EAST INDIA COMPANY

AT the outset the East India Company was confronted with native governments of considerable power. As early as 1686 the East India Company announced its intention 'to establish a large well grounded sure English dominion in India for all time to come'. ('Living India' by Savel Zimmand,) Slowly territorial sovereignty was obtained under local suzerainty as in Madras and in Bengal or by gift from Portugal as at Bombay where complete suzerainty rested with the Crown. The expansion of company's authority was attained essentially in Bengal in 1757, and in



the following years, armed intervention and intrigues were followed by agreements with the Nawab of Bengal and the titular Emperor of India. The Company could not rest satisfied with that position for long. It is important to note that its advance was favoured by the Imperial Parliament by virtue of the Act of 1773, which subjected the Company's government to imperial control. Long series of wars resulted in additions to the territory administered by the Company. In the end greater part of India came under it and the remaining states were bound by ever closer ties of agreement to the sovereign power. The participation of the last Moghul Emperor in the Sepoy rebellion of 1857 resulted in the extinction of the dynasty. This in short is the consolidation of power by the Company.

The form of the government under the company had been autocratic. Some features of political tutelage by the company are noteworthy. Ultimate enfranchisement of India was implicit in the Burke's doctrine of trusteeship, since the guardian's duty ends when the ward comes of age. In 1818 Lord Hastings, Governor-General of India declared his belief that a time not very remote would arrive when

the English on sound principles of policy would wish to relinquish domination over India. (See His Private Journal page : 326) Thomas Munro Hastings's ablest lieutenant envisaged the general withdrawal of British control over India as soon as Indians would be able to govern and protect themselves. Another Prophet of India's emancipation was Henry Lawrence, who in 1844 wrote thus: "We cannot expect to hold India for ever....let us so conduct ourselves....as when the connection ceases, it may do so not with convulsion, but with mutual esteem and affection and that England may then have in India a noble ally enlightened and brought into the scale of nations under her guidance and fostering care."

No doubt these were personal opinions. But there was reference also to this problem in official pronouncements as well. When Mecauly made his famous speech in the House of Commons on the charter Bill of 1833, he was speaking as the Secretary of the Board of Control and the speech was warmly praised by Charles Grant who as President of the Board of trade was in charge of the Bill. In that speech Mecauly expressed the hope that in course of time the people of India would



become fitted for representative government. Hence the ultimate goal of India, however dimly defined, was not in doubt.

## Chapter VII

### UNDER THE CROWN

AFTER the proclamation of Queen Victoria as sovereign the administration of India was taken over by the Crown from the Company. Though the administration continued to be autocratic her historic proclamation dated 1-11-1858 wherein Her Majesty observed thus: "We hold ourselves bound to the natives of Indian territories by the same obligations of duty which binds us to all our other subjects and these obligations by the blessings of almighty God we shall faithfully and consciously fulfill" raised high hopes and expectations. The Secretary of State for India with Cabinet rank came on the scene with his Council in the place of Board of control and the Court of Directors of East India Company. But the constitutional development of India did not proceed on any systematic or organised plan. No doubt

legislative bodies were set up both for the supreme government and for the provinces from time to time. These remained nominated bodies without powers other than of legislation. A slight extension of authority and an approach of election of few members was conceded in 1892. Later King Edward VII in his proclamation dated 2-11-1908 reiterated his belief thus: "Important classes among you representing ideas that have been fostered and encouraged by British rule claim equality of citizenship and a greater share in legislation and government. The politic satisfaction of such a claim will strengthen, not impair existing authority and power." Consequently Minto-Morley Reforms (1909) increased the size of legislatures, accorded non-official majorities in some provinces and extended considerably the scope of the authority of the legislatures by permitting discussions on resolutions and the Budget, The right of questioning the administration also was extended. But Lord Morley, the then Secretary of State for India repudiated the idea of introducing responsible government even indirectly. Besides Lord Minto, the Governor-General thought it fit to receive a got up deputation headed by H. H.



the Aga Khan designed to press for special privileges for the Muslims, presumably to check the rising tide of Indian Nationalism.

In 1909 recommendations were made by the decentralisation committee to the effect that the control exercised by the Government of India over the provincial governments should be relaxed. The Government of India accepted the recommendations by adopting two resolutions one in 1915 and the other in 1918, approved of a substantial increase in the number of elected members to the Municipalities and Local Bodies, and the right to have non-officials as Chairmen and also agreed to permit local bodies and except in specified cases to have control over their employees. The setting up of village Panchayats charged with the duties of attending to village sanitation and education and having power to try petty Civil and Criminal disputes of local origin was encouraged.

## Chapter VIII

### WAR AND THE MONTFORD REFORMS

THE services of India in the first World War led to vital decisions to guide India along the path of responsible government by gradual stages under the authority of parliament. The historic declaration of Montague, the then Secretary of State for India, in 1917 envisaging a gradual development of self governing institutions with a view to bring about progressive realisation of responsible government in India within the Empire and also increasing association of Indians in every branch of administration was well received at the outset. Later on, the thinking Public of India could not reconcile the Rowlat Act with the spirit of the Reforms. With the first shot of General Dyer's gun at Amritsar, vanished all hopes of friendly reform. Afterwards the usual circle of agitation, repression and reforms was repeated. Subsequently representatives of the



Government of India who were incidentally Indians were invited to the Imperial War Cabinet, to the Peace table and to the various council tables of the Empire and the world. More definite was the declaration of His Majesty who used the Congress expression "Swaraj" (first used by Dadabhai Naoroji, G. O. M. of India in his Presidential address to the Calcutta Congress in 1906) in his message which was read by H. R. H. the Duke of Connaught when inaugurating the Council of State and Legislative Assembly on 6-2-1921. Para IX of the revised instrument of instructions to the Viceroy and Governor-General issued on 15-3-1921 completely cleared any misunderstanding or doubt regarding the implications of the policy of His Majesty's Government. Mr. Winston Churchill also at the Imperial Conference in 1921 spoke thus:- "We owe to India that deep debt and we look forward confidently to the days when Indian government and the people would have assumed fully and completely their Dominion status."

The Government of India Act of 1919 provided for a complex transitional constitution, which introduced a slight instalment of responsible government. So far as communal

representation was concerned the scheme was based on the Lucknow Pact, arrived at between the Congress and the League. The creation of communal electorates had been agreed on as a necessary evil. But when an evil is tolerated it tends to expand and spread in different directions. Recognised at first in the case of Muslims and Europeans it has been extended to the Indian Christians, the Sikhs, the Anglo-Indians and lastly to the depressed classes. The Central Legislature were given ample opportunities to criticise the executive, though it was irresponsible and irremovable. They could also throw out grants and refuse to sanction votable items of expenditure. Of course, there was the power of certification by the Viceroy. They could also discuss freely the non-votable items of expenditure. Interpellations, adjournment and cut motions and moves for censure gave wide scope to the members to bring the Bureaucracy under the searchlight. There were also opportunities to do valuable work in various select committees.

The Reforms established in the provinces a system of dyarchy under which each provincial government was divided into two sections to each of which were assigned certain subjects



allocated as Provincial as opposed to Central. According to Lionel Curtis the protagonist of this curious constitutional concept: "Dyarchy is a method of introducing responsible government in a limited and manageable sphere of administration, which could be contracted or extended in accordance with the practical results attained without imperilling the structure of the government itself." Dyarchy was the name assigned by the celebrated historian Mommsen to the system introduced by Augustus. Gibbon pointed out rightly that dyarchy was a devision of executive functions and not of power. His observation that "The principles of a true Constitution are irrevocably lost when the legislative power is nominated by the executive" is significant. The transferred subjects were to be administered by the governor with the assistance of ministers and the reserved subjects by himself with his executive council consisting of equal number of officials and non-officials subject to the power of the governor to override opposition in either case. The ministers who were supposed to administer the transferred subjects were never in control of a single departments

## Chapter IX

### WORKING OF DYARCHY

As the reforms were preceded by severe repression there was no favourable reception. In Bengal there was a virtual breakdown of the scheme. In the Central Provinces also the reforms could be worked only after a period of dead-lock. In other provinces as well there were storms in tea cups. In the very nature of things joint responsibility was impracticable. On the other hand it was very difficult to keep the reserved half and the transferred half in watertight compartments. As the Justice Party came to power in Madras, there was scope for operation of joint responsibility within the ministry and we had a Chief Minister for Madras. Even the Independent Party which entered Office later on retained the tradition of having a Chief Minister.

But the Office was no bed of roses for any body. Sir K. V. Reddy in his evidence before



the Muddiman Committee observed:- "I was minister for development without forests agriculture minus, irrigation, nothing to do with the administration of Madras Agricultural Loan Act and the Madras Land Improvement Loan Act; I was minister for industries without control over factories and boilers, electricity water power, mines or labour." Sir A. P. Patro while still minister of education stated that one of the serious anomalies was made more absolute in the transferred subjects than in the reserved subjects. Under section 52 of the Constitution Act of 1919, the Governor was held to be in charge of the departments transferred to ministers. The observation of the late Sir C. Y. Chintamani is significant, viz., "I have passed through every stage, from a habitual 'Honourable Minister is responsible and his views shall prevail and I must support the Honourable Minister', to being overruled in matters of varying degrees of importance and unimportance down to a nomination of library committee". Nawab Ali, Ex-Minister of Bengal said "While the minister was responsible to the Legislative Council for his administration it was the Governor who had the final decision on

almost all questions though he was very little in touch with the Council." Lala Harikishan Lal also expressed himself in similar terms.

On one occasion, the Madras ministers who had a solid majority behind them encouraged their followers to throw out a major legislative proposal of the government with regard to irrigation. The Executive Councillor concerned resigned immediately. The equally anomalous spectacle of a member of the non-parliamentary Executive speaking, canvassing and voting against the proposals of his popular colleagues was seen in the U. P. Council, in the debate on the District Boards Bill; a member of the Executive Council spoke strongly against the proposals of the Minister. On the second day of the debate, the Finance Member openly asked the officials to vote against the Bill. Strangely, aggressive champions of executive irresponsibility to the legislature have often been Indian publicmen as senior civil servants. Sir C. P. Ramaswamy Iyer invented the ingenious theory that by virtue of a despatch of the Court of Directors during the regime of the East India Company all appointments, even in the transferred half, were made by the Governor. Sir Abdur Rahim in Bengal distin-



guished himself equally by his refusal to be influenced by the council. The Maharajah of Mahummadabad who was Home Member in the U.P. was as strong an advocate of irresponsibility in the reserved subjects as the most orthodox civil servant.

The ministers were obliged to mould policy to secure the goodwill of the official block which kept them in office. Replying to a vote of censure in November 1923, the Rajah of Panagal declared that as he was appointed by the Governor he was responsible to the Governor. In Bengal a resolution of no confidence was declared *ultravires*, where as in Madras it was admitted. Edward Villiers refusing to contest for the third time for the Bengal Council said: "Instead of teaching her responsibility we are teaching her irresponsibility. Until reforms are recast and until such subjects as are transferred, no matter how small or unimportant they may be, lock stock and barrel uninterfered with by the Governor and uninfluenced by the government votes in the Council.....I see no hope for the success of the Reforms." These checks, counter checks restraints and the limitations were not confined to the transferred half alone. Mr. T. R.

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Venkatarama Sastry resigned the Law Membership in Madras after a few days stay in office as the control over the police was taken away from the Law Member. Sir Chimanlal Setalwad of Bombay complained that the governor, not infrequently, ignored the Executive Councillors while administering the reserved subjects.

## Chapter X

### THE ROLE OF CIVIL SERVANTS

THE significance of the Indian Civil Service and its attitude to the Reforms has had an important bearing on the course of the constitutional evolution in India. Ramsay Macdonald, as a Member of the Public Services Commission (1913-14) described the I. C. S. thus:- "It is more than a collection of individuals; It is a bureaucracy with a corporate life a machine, a freemasonry. It moulds the raw recruits into its own image." The Montague-Chelmsford Report expressed the view that the I. C. S. has been in effect much more of a government corporation than purely a civil service in the English sense. They have their



berths reserved in all departments of administration. So it claimed the right to advise the governing caste. It is a soulless machine out of touch with the population it governs." Further the following sentences from the speech of Lloyd George on 2-8-1922 as the head of the coalition government regarding the I. C. S. are revealing:- "I see no period when they (Indians) can dispense with the guidance and assistance of the small nucleus of the British civil service. They are the steel frame of the whole structure. I do not care what you build on; if you take the steel frame out, the whole structure will collapse." Concluding he said, "There is one institution which we will not interfere with, there is one institution, we will not deprive of its functions or of its privileges and that is the British Civil Service of India." It is no wonder that the Indian Civil Service proved to be a triple blunder and a contradiction in terms. The majority of its personnel were never Indian, most of them were not at all Civil and they were never inspired by the spirit of Service.

Evidently, a bureaucracy which not only administers but governs is incompatible with democracy. If effective power is to be trans-

ferred, it is obvious that the governing functions of the civil service must disappear and their control and direction in India must go to the ministers. Though dyarchy showed unexpected signs of strength in many other directions and proved to be a source of political progress, in its main idea, namely introducing the principle of responsible government it proved an unqualified failure. Sardar K. M. Pannicker, epigrammatically observed that "In the dyarchical animal which was a cross between the irresponsible advisory councils of the Minto-Morley type and responsible parliamentary government, the characteristics of the first became more and more clear with age though the colour and shape remain that of the second." The result was indeed a mockery of democracy. Everyone was dissatisfied with this transitional arrangement. There was wide spread demand for radical reforms. In fact the preamble of the Act of 1919 envisaged periodical instalments of reforms to enable India to reach the goal of full responsible government.



## Chapter XI

### EFFORTS AT FURTHER REFORMS

WHEN the late Lord Birkenhead, as secretary of state for India threw a challenge to Indians to frame a constitution of their own, the Nehru Committee appointed by the All Parties Conference produced its report which demanded Dominion status. Later on as the Muslims were dissatisfied with it, the Congress declared Independence as the goal in 1929. Afterwards the Simon Commission was sent to India by His Majesty's Government to study and report on the Indian problem. As it did not include a single Indian, it was boycotted by all parties that really counted. The Indian central committee presided over by the late Sir C. Sankar Nair which co-operated with the Simon Commission demanded Dominion status. Indians of all shades of opinion and schools of thought made it clear that they would not be prepared to discuss the Indian problem on the basis of

the recommendations of the Simon Commission. Therefore its proposals regarding (1) the ultimate but not immediate federal constitution (2) abolition of dyarchy (3) extension of franchise and increase in the number of members of provincial legislatures (4) retention of separate communal electorates and of governor's special powers in the executive sphere (5) power of certification and continuance the irresponsible nature of the executive had a hostile reception. What is more the despatch of the Government of India on these proposals was also critical. Thus it ceased to be the basis of the subsequent constitutional deliberations.

Lord Irwin as Viceroy with the full authority of the British Cabinet declared on 31-10-1929 that the natural issue of India's constitutional progress was the attainment of Dominion status and the ultimate attainment of the Dominion status was implicit in the declaration of 1917. Stanley Baldwin, the then leader of opposition in a Parliamentary debate on 7-11-1929 said "Surely no one dreams of a selfgoverning India with an inferior status, nor can we wish that India should be content with an inferior status because that would mean that we had failed in our work in India. Subsequently the



first Round Table Conference was summoned in England. At its conclusion Ramsay Macdonald, the then Premier declared that His Majesty's government had agreed to place the responsibility of Indian government in the hands of the legislatures subject to certain safeguards during the transitory period. At the second R. T. C. the delegates including Mahatma Gandhi failed to arrive at an agreement on the communal problem; the British Premier announced his decision known as the Communal Award. It was modified by the Poona Pact arrived at between the leaders of the Scheduled Castes and the Caste Hindus under the shadow of a fast-into-death by Mahatma Gandhi. Though it managed to keep the Harijans within the pale of the Hindu society, it hit the caste Hindus most in Bengal and the Punjab. Thus the communal award became the basis for the constitutional structure. Under this arrangement Muslims and Europeans not only got separate electorates but also weightage. Separate electorates were inflicted on the Sikhs and the Indian Christians against their wishes. The communal award created different classes of citizens who are placed there in on account of the accident of

birth or the choice of faith.

The third R. T. C. met again in 1932, after which the proposals for the constitutional reforms were put forth in a White paper. Afterwards a number of Indian and British publicists and publicmen tendered evidence before the joint Select Committee of both the Houses of Parliament which considered these proposals at length. The report of this committee suggested more powers to the Governor-General and Governors and recommended the continuance of executive independence. The suggestion that the draft instruments of instructions should be submitted to and approved by Parliament was made by this committee. It also recommended indirect election to the federal lower chamber. Afterwards the Government of India Bill was drafted along these lines with further modifications to the detriment of India and finally passed after prolonged deliberations into a statute in 1935.



The legality and constitutional propriety of these ministries were seriously questioned. The proper course would have been to dissolve the legislatures, appeal to the electorate on this issue and abide by its decision. No doubt minority ministries functioned quite constitutionally at intervals in Britain. But it is necessary to come down from the heights of legalism to the plains of practical politics. These ministries though they tried their level best to make the best use of the bad bargain carried little weight and less support. Their existence became a source of irritation and insult. The problem of facing a hostile legislature after six months became a live one. Every one felt that sooner the conflict was settled the better it would be. The lapse of about three months cooled the spirits and every one was able to take a sympathetic and unbiased view of the situation. On 21st June 1937 the Viceroy issued a lengthy statement dealing with the constitutional position. It was cautiously and politely worded and assured the public that it would be the object of all servants of the Crown in India to avoid clash and conflict in every way consistent with the special responsibilities for the minorities and the like. The

message had a favourable reception. It came very near the actual terms of the assurance demanded by the Congress. Thus the situation was eased and the way was paved for the establishment of cordial constitutional relations.

In the beginning many had their misgivings about the constitutional role of the Congress which not very long before had been actively engaged in unconstitutional activities. It would be out of place to describe in detail the achievements of the various ministries. It would be sufficient to say that they scrupulously safeguarded their rights and status. When questions were asked in Parliament regarding the removal of the Neill statue to the Madras Museum, Mr. C. Rajagopalachari, as Premier successfully contended that it was a breach of convention to question the constitutional activities of a provincial ministry. Orissa took a bold stand over the appointment of a local civilian to the acting Governorship. At the eleventh hour the permanent incumbent saved the situation by cancelling his leave at great personal inconvenience. Brett, the then Chief Secretary of Bihar was made to apologise for having sent a circular to all district officers asking them not to carry out the orders of the



ministers unless they were countersigned by the permanent secretaries of the departments concerned.

Certain developments however caused dissatisfaction. The Congress High Command not only directed but even interfered with the day to-day decisions of the provincial ministries. The Madras Assembly's proposal to send its Speaker to England to study parliamentary practice was torpedoed. The Batliwala prosecution betrayed the executive vengeance. Further, the higher commanders and the zonal dictators indulged in the hobby of issuing instruments of instructions from time to time. Outstanding leaders like K. F. Nariman, Dr. N. B. Khare and Sri Subash Chandra Bose who dared to oppose the official attitude of the Congress hierarchy had to pay a heavy penalty and suffer political death. The phenomenon was aptly described as an incipient danger by the Rt. Hon'ble V. S. Srinivasa Sastry. It is also possible to explain away these anomalies. The Congress was working the constitution under difficulties inherent not only in the legal constitution but also in the political situation. With a view to bring about national unity, to achieve its

goal of political independence the Congress did not allow its representatives to create or develop conflicting tendencies and separatist groups based on personal, territorial or communal loyalties.

In the non-congress provinces multiple-party system operated. Coalitions are compromises in opinion and policy. In Bengal the ministry whatever its label be had to depend on the support of the European group for its existence. It is a most embarrassing position which is welcome neither to the Cabinet nor to the Europeans. In Sind things were hopelessly unstable from the very moment of the introduction of provincial autonomy. Assam also betrayed signs of instability from time to time. The Muslim League by virtue of its communal appeal gained strength in these provinces and imposed its will on the respective governments from time to time. The job hunters and power wielders oscillated between communalism, and nationalism as the occasion demanded. Hence the political weathercocks and the constitutional chameleons of these provinces became almost proverbial. In the midst of the storm, the coalition ministry of the Punjab worked well till the day of its



resignation, in spite of the out of date and reactionary ideology of the Unionist party. It is a typical instance of political expediency when a decaying and disintegrating party is pushed into the forefront to avoid a greater evil. As the necessary preliminaries were being completed and the atmosphere for inauguration of the federal part of the constitution Act was becoming favourable, the international situation worsened. The clouds of war drew nearer and became thicker. Ultimately the Second World War broke out.

## Chapter XIV

### ORIGIN OF THE STATES

WHILE dealing with constitutionalism in India, the Native States cannot be ignored. The states constitute one third of the area and comprise one fourth of the population of India. Their role is as important and interesting as it is baffling. They have always been an essential part of the Indian polity. Their geographical position is note-worthy. In the extreme North lies the great state of Kashmir extending to the Pamirs on the one side and

to Tibet on the other. At the very tip of the peninsula is the ancient and important state of Travancore with a large sea board. On the table-land of the Deccan the dominions of the Nizam of Hyderabad and Berar stretch over a vast area and stand as the connecting link between the South and the North. Further South lies the progressive State of Mysore. The territory of Rajaputana is under the sovereignty of the representatives of ancient dynasties, the most important of which are Udaipur, Jaipur, Jodhapur and Bikaner. Spread over Central India are the States of Gwalior and Indore. The Sikh dominion in the Punjab is represented by the States of Patiala, Nabha, Jind, Faridkote and Kapurthala, while spread over the lesser ranges of the Himalayas are the smaller Rajaput States the upholders of an unbroken tradition which neither the Pathan nor the Moghul were able to reach or conquer.

Sardar K. M. Pannicker summarised the historical importance of the States thus:- "In fact the history of India in its different stages is represented on the map of the States. An unbroken Hindu tradition dating back to dim antiquity is represented by such states as Cooch-



Behar whose rulers claim to have ruled over the same territory since the time of the Mahabharata battle, by the Rathores who represent the imperial dynasty of the Rashtrakutas, and by the rulers of Cochin and Travancore who claim descent from the Chera kings. The fight against the Islamic invasions is represented by the premier Rajaput State of Udaipur while Mysore as an original viceroyalty of the Vijayanagar Empire represents the tradition of Hindu independence. Pre-Mogul rule is represented by the State of Palanpur, while the Moghul tradition is continued uninterrupted by the House of Asaf Jah in Hyderabad. The Bhonsle Chatrapaty of Kolhapur is a descendant of Shivaji, while the great States of Gawlior, Baroda and Indore represent the Maratha Empire which extended over Hindustan. The Rohilla invasion survives in the State of Rampur, and the sikh regime in the States of Patiala, Nabha and Jind. Thus the States of India are rooted firmly in Indian history. Every period finds its representative. Vasco-de-gama negotiated with the same family in Cochin that now rules over the State, and the British made their first treaty in India with the ruler of Travancore. The history of the

Century that preceded the battle of Plassey is mainly the fight of these States against the Moghuls while the story of the establishment of the British rule is inextricably connected with them." They are not, therefore, altogether a creation of the paramount Power.

Sir Benjamin Lindsay narrated their pedigree thus: "For the most part they are survivals of former dynasties and powers which in one way or another contrived to prolong their existence after the collapse of the Moghul Empire and the ensuing struggle for supremacy which ended in favour of the British. Some of these while the Moghul Empire stood had been able to establish themselves in a position of practical independence, yielding only a nominal allegiance to the Emperors of Delhi and were able to secure later recognition from the British Power. Others of them such as Rajaput States of Central India had been engaged for centuries in conflict first with the Moghuls and later with the Marathas and were only rescued from extinction by British intervention which secured them in possession of such territories as they had been able to retain. Still others were Principalities carved out during the short lived period of Maratha



domination of Western India, who came to terms with the British forces, which broke up the Maratha confederation."

The following analysis of the Butler Committee also is significant: "It is not in accordance with historical fact that when the Indian States came into contact with the British power they were independent in fact. None of them ever held international status. Nearly all of them were subordinate or tributary to the Moghul Empire, the Maratha Supremacy or the Sikh Kingdom. Some of them were rescued and others were created." It is interesting to note that the Paramount Power created Tonk Jhalwar, Rajpipla, Gharwal, Athmalik and Lawa, recreated Benares, abolished Nagapur Satara, Jhansi and Tanjore. The total number of States is about six hundred. Among them all varieties ranging from substantial internal autonomy to maximum administrative control by the paramount power are found.

## Chapter XV

### THEIR RELATIONS WITH THE BRITISH

THE regulation of relations between the Indian States themselves on the one hand and British India on the other comprising a general body of agreements usages and principles which constitute inter-statal law differed from Municipal law and International law in the sense that it was not directly recognised by municipal courts and was enforceable only by executive order, whose sanction rested on the undenied paramount power of the British Crown. Only forty six States had the treaty relationship with the paramount power. The treaties did not merely embody discretionary limitations on the British Crown. They are obligations undertaken for consideration and cannot *Prima facie* be modified by the unilateral acts. The rest of the States had engagements and sanads. The value allotted and the weight given to these treaties make interesting



reading.

According to D. K. Sen, these treaties are of personal character. Vardachari opines, that the treaties are to be regarded as guides of political conduct, rather than sources of legal rights. Gundappa goes further and says that these forty six treaties are no treaties at all; they are so called by courtesy and have no legal sanction behind them. Upto 1813 the treaties were of perpetual honour favour and alliance. Prof. Hall says that these treaties really amount to little more than statements of limitations which the Imperial government except in very exceptional circumstances placed on its own action. No doubt this was not the original intention of these treaties but the conditions of English sovereignty in India have greatly changed since they were concluded and the modifications of their effect which the changed conditions have rendered are thoroughly well understood and acknowledged. Evidently the Indian States have lost the character of independence not through any epoch making declaration of British sovereignty but by a gradual change in the policy pursued towards them by the British government. The treaty-relationship started between allies one

of which grew into a position of paramountcy brought about this unparalleled relationship.

Col. John Munro (1815-25) for example held an inconsistent position by being Resident and Dewan for more than three years. During the minority of a Ruler or Regency the Resident played an overshadowing part. On 1-2-1814 Lord Hastings wrote in his private Journal thus: "In our treaties with the Princes of India, we recognise them as independent Sovereigns. Then we send a Resident to their Courts. Instead of acting as an Ambassador he assumes the functions of a dictator interferes in all their private concerns, countenances refractory subjects against them and makes the most ostentatious exhibition of his exercise of authority." How subsidiary alliance changed into subordinate isolation and later resulted in subordinate union is a matter of history. Finally Lord Reading in his letter dated 27-3-1926 to the Nizam of Hyderabad referred to Paramountcy as not based upon treaties and engagements but existing independent of them and quite apart from its prerogative in matters relating to foreign powers and policies. His Lordship stressed the hard fact that: "No ruler of an Indian



State can justifiably claim to negotiate with the British government on an equal footing." The idea of Paramountcy is an original political concept forged by the British in the factory of experience. Paramountcy is undoubtedly paramount and defies definition. Unfortunately none of the records of the political department which one would wish to consult are open to inspection by the general public.

"The precise category to be assigned to the Indian States in International Law," as Sir P. S. Sivaswamy Iyer pointed out, "is to the academic as fascinating as it is baffling." Indian States we are told are quasi-international. At every point of the study of the problems of the Indian States one finds purely legal ideas or jural concepts made inapplicable owing to the inroads made by paramountcy or by more subtle application of the doctrine of Act of State defying Jural analysis. Wheatson in his *International Law* states: "The Protected Princes enjoy and exercise under the sanction of the British government the functions and attributes of internal sovereignty, but they are bound to receive the Resident or Agent appointed by the Viceroy."

The government of India formally declared

that the principles of international law have no bearing upon the relations between itself and the Indian States. Though it is well established that while travelling abroad these Princes enjoy the status of a foreign ruling prince and are exempt from Municipal Jurisdiction, (Ref: Statham. V. Statham) yet it is clear that the princes have been gradually shifted from the International to the Imperial plane. The problem of the Indian States has ultimately been transferred from the province of the international lawyer to that of the practical states-man and political philosopher where it has rested ever since as Dr. Mehta observed in his book *Lord Hastings and the Indian States*. Moreover rebellion by the States against the Crown is treason and not an act of war. Sir W. Lee Warner aptly summed up the situation thus: "There is a paramount power in the British Crown of which the extent is wisely left undefined. There is a subordination in the Indian States which is understood but not explained."



## Chapter XVI

### SOVEREIGNTY OF THE STATES

THE sovereignty of the Indian States is limited, restricted and what is more regulated. Various theories are propounded to explain the situation. Sir Henry Maine in his minute on the Kathiawar case (1864) observed: "Sovereignty is a term which in international Law indicates a well ascertained assemblage of separate powers and privileges.....There is not nor has there ever been anything in international Law to prevent some rights being lodged with one possessor and some with another. Sovereignty has always been divisible."

Dr. Victor Burns and Dr. Karl Bilfinger, two eminent German Professors go further and opine thus: "The paramount power of the British Crown is not incompatible with the independent status of Indian States as international persons. States which are under the paramountcy of another State remain indepen-

dent so long as they are not incorporated in the other State." But here is a confusion between sovereignty and independence. According to modern publicists sovereignty is divisible but independence is not. Of course the term *Partial Independence* is popularly used. But technically it is incorrect.

During the deliberations that preceded the passage of the Government of India Act of 1935 and afterwards the Princes tried to assert that their relations were with the Crown and they could deal with it on a par independent of the other forces. Varadachari ably argued from English constitutional practice and referred to the fact of change of agency from the East India Company to the Crown without consulting the Rulers in 1858 (Vide section 67 of the Government of India Act of 1858) and concluded that there was not much substance in the plea of the Princes that the rights and obligations arising from the treaties engagements and sanads could not be assigned by the Crown to any other party except with their consent. It is significant that the term alliance familiar to readers of earlier Acts of Parliament is not found in the government of India Act of 1935. The word found instead



to describe the nexus between the Crown and the States is relationship (vide section 3) "The new term relationship," as Prof. J. H. Morgan (legal adviser to the Chamber of Princes) pointed out "May excite doubt, but it cannot provoke dispute." The term sovereignty with reference to the status of the States, which occurs in the instrument of instructions and the draft instrument of accession appears only once in the Act in another context to describe the authority of the Nizam over the Berars (Section 47 of the Act of 1935). Further the term used in connection with accession is *instrument* and not treaty.

## Chapter XVII

### CONSTITUTIONALISM IN THE STATES

THE reason why constitutionalism could not take firm root in the Native States is that they are medieval in structure and feudal in spirit. Too often in the past did the paramount power abet backwardness and misrule by affording the Rulers cotton-wool-protection. Sir Henry Lawrence pointed out long ago: "If ever there was a device to perpetuate

maladministration, it is that of a Native Ruler backed by British bayonets and directed by a British Resident."

Nearly twelve years ago Sir C. P. Ramaswamy Iyer, who is temperamentally fond of forcing events and making history (But history has the fatal knack of growing out of one's control) declared that the Rulers could not grant constitutional reforms without the assent of the paramount power. There is truly sufficient ground for this shrewd suspicion. Though Travancore is a full powered State, it was only in 1932 that the British government relinquished their claim to exercise supervision over legislation in the State, to scrutinise the judgements of the Travancore High Court inflicting capital or life sentences and to advise the State as to certain high appointments. As a matter of fact the inauguration of the Travancore Legislative Council in 1888 and the legislative reforms in 1932 took place after consulting the paramount power.

Further Article 19 of the Mysore Treaty of 1913, which is one of the latest agreements between the paramount power and a major Indian State, clearly states that no major change in the system of administration now in



force shall be made without the consent of the Governor General in Council. A peculiar feature of Indian State law is that there are rights of intervention in the internal affairs of many States which arise out of express provisions of their treaties. Besides introduction of responsible government results in substantial modifications in the inter relationship between the ruler and the paramount power. Hence any proposed change should be consensual in the sense that the paramount power and the ruler should combine together, for the purpose of implementing the transfer of responsibility power and functions to a popularly elected ministry.

Subsequently, Earl Winterton made a historic pronouncement on the changing outlook of the paramount power. His Lordship stated that it was not the policy of the paramount power in ordinary circumstances to interfere in the internal affairs of the full powered States. With reference to proposals for constitutional reforms, he added that the consent of the paramount power had not been required, before such advance was approved by various Princes nor so far as he was aware had it been sought in such matters. He further said that the

paramount power would under ordinary circumstances confine itself to tendering advice when consulted. But the deposition of the Maharaja of Rewa for introducing responsible government without reference to advisory council set up by the paramount power baffled every one.

It is a notorious fact that there has along been wide spread suppression of civil and personal liberties in most of the States. The fact is that vast majority, of the States left to themselves are incapable of maintaining civilised standards of efficient administration. Hence some sort of grouping either with the neighbouring States or adjacent Provinces is imperative. Much weight cannot be given to the antiquated treaties, understandings and usages.

In spite of political isolation geographically historically, economically and culturally the States and the Provinces are indivisible and form part of a single organism. Experience of the States also confirms this theory. The Congress Ministry in Orissa refused to lend its reserve police to suppress the agitation in the neighbouring States. The same ministry promulgated an order forbidding the arrest of any person on the basis of an extradition



warrant from a State. During Gandhiji's Rajakot fast, the Congress ministries in the provinces threatened to resign in order to force the hands of the powers that be. Agitation in States received wide publicity and excited interest through out the country. In spite of the fact that Sheik Abdulla raised the ill-advised slogan of *Quit Kashmir* Pandit Nehru thought it fit to rush to Kashmir at once to uphold the prestige of the imprisoned leader and arrange for his defence. The rising tide of Indian Nationalism tended to rush forth and overflow the artificial bounds that separate the States from British India. The attempts of the Princes to ally themselves with powerful minorities in order to put down the movement or at least to retard it failed. But when fundamental issues regarding civil liberties, economic advantages, political rights and social amenities for the masses came to the forefront the divide and rule policy was of no avail. Thus there can be no safety for islands of autocracy in a democratic ocean where tides are rising with a new vehemence. A sturdy champion of the rights and privileges of the States like Sir C. P. Ramaswamy Iyer went to the extent of declaring that if any State was

irresponsive to national tendencies or was not working in harmony with the national policy of India that State did not deserve to live.

## Chapter XVIII

### CABINET MISSION'S STATEMENT

PARA 14 of the Cabinet Mission's Statement dated 16-5-1947 made it clear that with the attainment of Independence by British India whether inside or outside the British Commonwealth, the relationship which had hitherto existed between the Rulers of the States and British Crown, would no longer be possible. Paramountcy could neither be retained by the British crown nor transferred to the new government. Cabinet delegation's note to princes on their treaties dated 22-5-1947 referring to the assurances given to the princes that there was no intention on the part of the crown to initiate any change in their relationship with the crown or the rights guaranteed by their treaties and engagements without their consent cleared the position by adding that the princes consented to any changes which might emerge as a result of negotiations



and would not unreasonably be with-held. The Chamber of the Princes has since confirmed that the States fully share the general desire in the country for the immediate attainment by India of her full stature. The States are also expected to strengthen their position by doing every thing possible to ensure that their administration conforms to the highest standard and make their contribution in framing the future constitution and take their due place in it when it is completed. It is also stated that, when a new fully self-governing or independent government or governments come into being in British India His Majesty's government's influence with these governments will not be such as to enable them to carry out the obligations of paramountcy. Moreover they could not contemplate that British troops would be retained in India for this purpose.

Thus as a logical sequence, His Majesty's government would cease to exercise the powers of paramountcy. This means that all the rights surrendered by the States to the paramount power would return to the States. The void would have to be filled either by the States entering into a federal relationship with

the successor government or governments in India or failing this, entering into particular political arrangements with it or them. Lord Pethick Lawrence, in the course of a press conference without definitely denying that the States might remain out as islands of independence within the Indian Union, pointed out that they had agreed to co-operate in forming the Union. In this connection it is important to bear in mind that during the Cripps negotiations about four years ago, a provision was made to permit the States to remain as independent countries with treaty relations with Britain. This time no such special provision was made.

Pandit Nehru's resolution moved during the very first sitting of the Constituent Assembly when the States were not at all represented either by the Rulers and their Advisers or the representatives of the States people defining the fundamental objectives of the proposed Independent Sovereign Republic and specially clause 4 raised a controversy. Sir C.P. Ramaswamy Iyer contended that in the formulation of the objectives of the Constituent Assembly the States had a right to be consulted especially as it was intended that the Republic of the



future would comprise the territories that now form the Indian States. Exception also was taken for the assertion that all power and authority of Sovereign Independent India and its constituent parts should be derived from the people. But Mr. N. Gopalaswamy Iyengar maintained that even in England this doctrine was definitely incontestible, that in spite of a hereditary monarch as the head of the State from whom in the form of law all authority is supposed to flow, the substance of real power and authority is derived from the people. As Sir S. P. Rajagopalachari former Vice-President of the Gwalior State Council pointed out that: "It is too late in the day to emphasise the point that the Sovereignty of the Ruler was originally based and continues to be based on the right of conquest at some forgotten age and to look too much into past ignoring the present and future trends in the world of to-day." Mr. Alladi Krishnaswamy Iyer in a forcible speech defending Nehru's resolution observed: "The authority of the Rulers can rest ultimately only on the will of the people concerned. The State machinery be it monarchy or democracy ultimately derives its sanction from the will of the people concerned. The

divine right of kings is not a legal or political creed in any part of the world at the present day. I do not think that it will be possible for hereditary monarchs to maintain their authority on such a medieval or archaic creed. The Cabinet Mission was quite alive to this and in their statement reference is made throughout to Indians including both the Indian States and British India, deciding the future constitution of India." Pandit Nehru himself did not ignore the belief that monarchy was a stabilising institution in times of stress and observed while moving the resolution that if the people of a particular State desired to have certain form of administration, even though it be monarchical it was open to them to have it. The theory of derivation of authority from the people is a very familiar one in many later day constitutions of the World. It is surprising that the formulation of this proposition in this twentieth century and after two World Wars should have raised any controversy at all.

The decision of Britain to quit India before June 1948 placed the States beyond controversy. British paramountcy would last until the final transfer of power and then would automatically come to an end. Afterwards the States would



become independent subject to agreements arrived at by the negotiations with the new government of the future which would finalise their position in the new Indian set-up. A general conference of Princes and Ministers held in Bombay on 2-4-1947 gave freedom to individual States to go into the Constituent Assembly at any time judged appropriate by the State concerned. Later, Pandit Nehru addressing the All India States People's Conference stated that the States which did not come into Constituent Assembly would be treated as hostile by the country. Subsequently eight major Indian States led by Baroda entered the Constituent Assembly when it reassembled for its third preliminary session on 28-4-1947. At this juncture, the States had their chance of playing a vital part in helping to construct the new India, strong, happy and contended, holding out for her people the pattern of a fuller and more prosperous life and helping to maintain and inspire the peace and progress. They could undertake this task efficiently after setting their houses in order by granting responsible government in their respective States. As soon as the paramount power stepped out the Princes should choose to

be either constitutional heads of their respective States, or disappear totally as a factor. The height of wisdom lies in learning from the experiences of others. If the Princes are to play their part properly, they have to identify themselves with the people.

## Chapter XIX

### THE EFFECTS OF WAR

THE outbreak of the second World War changed the entire atmosphere. India was not consulted but automatically declared a belligerent. This was interpreted as an insult to their dignity and as an affront to their self-respect by the politically minded Indians. The Congress Working Committee after prolonged deliberations passed its historic resolution condemning fascist aggression and demanding Independence as a prerequisite to decide India's attitude to this war. Further Britain was called upon to shed her Imperialism and define her war aims definitely. As no satisfactory reply was forthcoming, the Congress Ministries in the Provinces resigned as a protest. The Muslim League, hitherto, engaged



in advertising the so called atrocities alleged to have been perpetrated by the Congress Ministries against the Muslims observed the occasion, as a day of deliverance.

Subsequently British attitude became clear. Mr. Churchill declared that the Atlantic Charter did not apply to India and he did not become the Premier to liquidate the Empire. The only war-aim uppermost in his mind was to win the war. As the British government did not like the idea of holding fresh elections since the Congress would return to power with a larger majority in any event, thought it fit to suspend the constitution. Even the modest demand to appoint experienced non-official Indians as Advisers was turned down. Only the seniormost British members of the I. C. S. were considered to be the fit persons. Thus deadlock came about pushing constitutionalism and progress into the background.

In this atmosphere of suspicion, mistrust and recrimination the Poona offer demanding a fulledged National Government as a condition precedent for India's active and armed participation in the War on the side of the Allies made by the Congress at the instance of Mr. C. Rajagopalachari even at the

risk of losing Gandhiji's leadership did not receive the attention it deserved. It was even sportingly agreed that Mr. Jinnah could be the Premier of the proposed National Government. But Mr. Jinnah, pooh-poohed it as too good to believe since the offer was not made to him directly and was only mentioned in the course of an interview to a British Journal.

Subsequently, Lord Linlithgow announced the decision to defer the introduction of the Federal part of the constitution for the duration of the war and also gave an assurance that no major constitutional changes would be introduced without the consent and willing co-operation of the minorities. The Viceregal assurance virtually amounted to inciting the minorities to obstruct the political progress till their impossible demands which grew and expanded day by day were satisfied.

Since then the Muslim League stiffened its attitude and proclaimed *Pakistan* as the goal. The slogan of *Pakistan or Perish* ceased to be a political counter for bargaining and became in the words of Mr. Jinnah, an article of faith and a question of life and death with the hundred million Muslims of India. It was proclaimed that by every test Muslims in India



constituted a separate nation and as such were entitled to live their own life according to their light. But the speech and countenance manners and behaviour give a direct lie to this assertion. The only Indian language which Mr. Jinnah knew well was Gujarati his mother tongue as he often told the public. He had more in common with his blood brother the *Bhatia* rather than with his co-religionists in Bengal and the Punjab. It was also said that Pakistan would be an independent and sovereign State subject to *Shariat* and ruled by *Millat*. Though exchange of population was not contemplated in the beginning, it was later considered and agreed to as a feasible proposition. Still it is doubtful whether a Moplah of Malabar or a Dudekula-saheb of Andhra would be quite at home in the Pakistan area. But Mr. Jinnah was embarrassed when the Sikhs demanded the same type of self-determination in the Punjab. Pakistan was never clearly and finally defined. It grew day by day. Mr. Jinnah went to the extent of demanding a corridor between Calcutta and Karachi to connect the Eastern and the Western zones of Pakistan. He even pressed for its solvency as well. Even then Pakistan would have a serious minority

problem. The Hindus in Pakistan would be hostages for the safety of the Muslims in India.

## Chapter XX

### EFFORTS TO END THE DEADLOCK

WITH the intensification of War, Indian problem assumed importance. Indians were undoubtedly anti-axis to the core. But they were anxious to fight as free men. Generalissimo Chiang Kai Sheik advised the Britishers to part with power and thus enable Indians to take their due place in the struggle against the Axis Powers. The entry of Japan into the War and her spectacular sweep in the Pacific Zone converted India into a pivotal base for the Allied operations. President Roosevelt also was obliged to evince interest in the Indian problem through his personal envoy at Delhi.

At this juncture, Churchill's Cabinet thought if fit to send Sir Stafford Cripps to India with the draft declaration which envisaged an Independent Federal Union or Unions after the War with the right of cessation from the Empire. Then the political stock of Sir Stafford was at its height due to his striking



diplomatic achievements in Russia. His views on the Indian problem also were considered to be sympathetic. During his previous visit he was the guest of Mahatma, closetted with Jawaharlal and banquetted by Bullubhai. His visit naturally raised high expectations. The proposals he brought merely constituted a skeleton. Moreover everyone was anxious about the immediate present. The continued story of the series of broken pledges by the British was a hurdle. Sir Stafford promised to put flesh and blood into the skeleton to give it life and activity. His talks and conferences with the various leaders raised high hopes. Even the Congress hugged him for a time under the impression that a National Government of the Cabinet variety was in sight. Viceregal veto was sought to be limited, restricted and regulated. Experts were called in to draft the details. The intervention of Colonel Johnson, the American Envoy in India was sought to devise a satisfactory Defence formula. Curiously Sir Stafford spoke different things to different men and evaded to meet the leaders together. But the Indian leaders evidently exchanged their notes. Suddenly some thing happened. The rumours about

threats of resignation by the Viceroy and the Commander-in-chief became current. Wire pulling commenced from the White Hall. Cripps realised that his steps were on quicksand. He had to prostrate to save himself. Consequently he floundered and retracted his previous promises. The Indian Leaders realised that he was no longer in a position to deliver goods on behalf of his country. Thus the Cripps Mission which was pregnant with promise proved to be a thorough failure and it cost him his career at home.

## Chapter XXI

### QUIT INDIA AND EXPANSION OF THE CENTRAL EXECUTIVE

THE '*Quit India*' move initiated by the Congress as a last resolve to win freedom, the country wide revolt and the severe repression intensified the deadlock. The Bengal famine came as a rude shock to humanity. But none of these events could change the mood of the bureaucracy or mend the methods of the official hierarchy. In that atmosphere of despondency the only redeeming feature was the



bold stand taken by the Indian Federal Court with regard to the emergency measures and the sweeping ordinances. Contrary to the common belief that when War comes the law goes, our central court of judicature vindicated that even in a subject country like India, law spoke the same language in war as in peace. Neither the clouds of war, nor the dust of political upheaval were allowed to blur their vision or minimise the judicial scrutiny. They delivered classical judgements worthy of the highest traditions of the Indian Judiciary. In depth of thought, in breadth of view, in powers alike of analysis and synthesis, in grace of style and in felicity of expression they are masterly judgment that can favourably be compared with the monumental judgements of the highest tribunals in other democracies. In spite of the fact that some of them were reversed by the Privy Council, generations yet unborn will read, reread and inwardly digest these historic declarations with pride and pleasure and remember that how the rights and liberties of the citizens during a dark and fatal period were upheld with dignity clarity and forcefulness. In the dark sky of constitutional depression these momentous pronounce-

ments proved to be veritable bright spots. None of these events succeeded in reforming the Bureaucracy or mending the methods of the official hierarchy.

The expansion of the Viceroy's Executive Council was regarded in certain quarters as a land mark. But there is no basis for such a conclusion. The Indians that were roped in by Lord Linlithgow were not at all representative though they had ability and public service to their credit as it was understood in the market places of the Empire. Numerically, the Indians no doubt constituted a clear majority in the Executive Council. But important portfolios like Defence, Home, Finance and Communications, were not transferred to them. The appointment of a non-official British business magnate like Sir Edward Benthall as a member in charge of Communications was indeed disconcerting. Under the exigencies of War portfolios hitherto held by Indians were bifurcated and even trifurcated to accommodate more Indians. Minor portfolios like Civil defence, Information, and Broadcasting, were also created. Really the department of Information and Broadcasting is merely an out-house of the Home department. Civil Defence



is a shadow of the Defence portfolio. The department of Supply is indeed an appendage to Commerce department. The renaming of the Indians Overseas portfolio as a department of Commonwealth-Relations while the Empire was functioning effectively and aggressively showed more humour than sense. The process was not one of expansion but elongation so far as Indians were concerned. Even a tried statesman and a skilled administrator like Sir C. P. Ramaswamy Iyer had to come out after a fortnight, probably for lack of opportunities and the depressing weight of limitations. Their functions were a caricature of democracy. In that set up, the Governor-General was the reality and the Executive Council a fiction. Its composition was a constitutional absurdity, its powers were nominal and the history of its expansion ludicrous. It was said rightly that the Refugee governments in London were more representative than the government of India. The Honourable Members to say the least proved to be political freaks intelligent enough to safeguard their own careers. Even between them there was no team spirit. They were merely apologists for the deadlock. It was merely a device

to deceive the public abroad. Viceroy's disregard for these honourable members was clearly illustrated when Gandhiji was released without any consultation with these gentlemen.

The appointment of Lord Wavell, disciple and biographer of Lord Allembry who was responsible for the declaration of Egyptian independence, gave a new turn to the situation. He proved to be a man of quick decision, and quicker action. He sounded a note of warning to the fissiparous elements by emphasising the geographical unity of India. He paid a flying visit to Britain and returned with a formula to break the dealock. Though His Lordship persuaded the Congress to concede parity to the Muslims with the Caste Hindus the negotiations broke down as the Muslim League wanted to nominate all the Muslim candidates to the Central Executive and thus reduce the Congress to the status of a Hindu body.



## Chapter XXII

### CABINET MISSION'S PROPOSALS AND THE INTERIM GOVERNMENT

THE triumph of the Labour party in the British elections came as a pleasant surprise. At the outset Indians, in view of the past experience were not inclined to attach much importance to this event. But they gradually realised its significance. The Parliamentary delegation that visited India prepared the ground for tackling the Indian tangle. Subsequently the Cabinet delegation came to India bent upon solving the Indian problem. In spite of the failure of the negotiations in Simla between the Congress and the League to reach an agreement, the Cabinet Mission made their own recommendations for solving the Indian constitutional deadlock on the 16th May, 1946. Briefly the propoals were :

- I. The Muslim League's demand for the partition of India was rejected.

An Interim central government with all portfolios including Defence in the hands of the Indian Leaders having full confidence of the people was to be set up at once.

II. Immediate arrangements were to be made to establish a constitution making body.

The Missions's 6-Point Plan for a constitution for India was:

(1) There should be a Union of India embracing both British India and the States which should deal with Foreign Affairs, Defence and Communications and should have powers necessary to raise the finances for the above subjects.

(2) The Union should have an Executive and a Legislature constituted from British Indian and States Representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities and as well as a majority of all members present and voting.

(3) All subjects other than the Union subjects and Residuary powers should vest in the Provinces.

(4) The States would retain all subjects and



powers other than those ceded to the Union.

(5) Provinces should be free to form Groups with Executives and Legislatures, and each Group could determine the Provincial subjects to be taken in common.

(6) The constitution of the Union and of the Groups should contain a provision whereby any Province could, by a majority vote of its legislative assembly, call for a reconsideration of the terms of the constitution after an initial period of ten years and at ten yearly intervals thereafter.

Evidently the Cabinet Mission did its best with a very difficult situation. At the outset Congress accepted the long term arrangement alone and the League accepted the entire plan. The Viceroy under these circumstances thought it fit to constitute a care-taker Government to run the administration. After some months of cool consideration negotiations were initiated between the Congress and the Viceroy and ultimately Pandit Nehru was called upon to form the Interim government. As the League did not extend its hand of co-operation, Pandit Nehru formed the Interim government with the co-operation of other minorities and Independent Muslims. This irritated the League and

provoked it to retract its previous acceptance of these proposals and observe the Direct Action day which led to unprecedented communal riots in Bengal. Their subsequent reaction in Bihar and other parts is a matter of history.

It is important to note that the Interim government under Nehru's leadership worked as a team and observed joint responsibility. Representative delegations were sent to the various council tables of the World and they achieved remarkable success and raised the status of India in the estimation of the World. In the meantime Lord Wavell managed to rope in the Muslim League into the Central Executive and curiously accepted their nominee of a Scheduled Caste representative out of the quota allotted to them. Then the trouble began. There was daily, hourly and minutely friction and perpetual fraying of nerves between the Congress nine and the League five in the Cabinet. In the history of the world there was never a Coalition so determined not to co-operate with each other. The League representatives were bent upon reducing the status of the Interim government to that of a mere Executive Council under the Constitution Act



of 1919, and created difficulty after difficulty. In the political sense League's view might be correct as there was no clear tradition of Cabinet responsibility under the Act of 1919. But its beginnings became apparent when three members of the Viceroy's Executive Council resigned on the occasion of Gandhiji's fast in prison because they shirked their share of responsibility for what might happen in consequence of a policy for which the Viceroy himself was primarily responsible. Hence in the formal sense League's stand was definitely wrong as the Act laid down that the decisions of the Governor-General in Council were taken by majority vote and immediately became corporate decisions of the government of India. When the entire Executive was Indianised eliminating the representatives of the Services on it, Cabinet responsibility was the natural and indeed the inevitable course that should have been adopted. Curiously, the League did not reverse its previous decision and accept the Cabinet delegation's plan. Its plea was that the Congress did not accept the scheme unreservedly, and would succeed in putting through its own interpretation in the Constituent Assembly by virtue of the brute majority.

The main difficulty was about the interpretation of the grouping clauses, vide paragraph 19(5) and (8) of the Cabinet Mission's statement. The Congress contended that the Provinces had the right to decide both as to grouping and as to their own constitutions. On the other hand the Muslim League had taken the view that the decisions of the Sections should in the absence of an agreement to the contrary should be taken by a simple majority of the representatives in the Section. Though Congress was willing to refer the issue to the Federal Court the League was not prepared to take the risk.

As the date for the meeting of the Constituent Assembly was drawing nearer, the British government invited the Indian Leaders to London for a conference. After the failure of this brief conference the British government announced that it agreed with the Muslim League's view point regarding the interpretation of the disputed clauses. This was in direct contrast with the categorical assurance given by Lord Pethick Lawrence in the course of a Press conference at New Delhi on the 17th May 1946, to the effect that the recommendations of the Cabinet Mission could not be modified in favour of one party to the disad-



vantage of another. Even then Congress agreed to act according to the British Interpretation while recognising the right of action by a Province to resist compulsory grouping with a view to enable the Muslim League to participate in the deliberations of the Constituent Assembly. Even then the Muslim League did not revise its attitude. On the other hand the demand for Pakistan was sought to be emphasised in a variety of ways. Under these circumstances the Congress was entitled in accordance with the Cabinet Mission's Plan to ask the Viceroy to force the resignation of the League nominees from the Interim government. But the Viceroy observed silence over this issue. His Excellency's conduct was really inexplicable and passed one's comprehension.

## Chapter XXIII

### THE CONSTITUENT ASSEMBLY OF INDIA

THE Constituent Assembly was entirely an Indian body subject to no outside control. Mahatma Gandhi even objected to the participation of the European members of the Provincial legislatures in the election of the members to

the Constituent Assembly. His objection was upheld by constitutional experts like Mr. Alladi Krishnaswamy Iyer and Mr. K. M. Munshi. Consequently European members of the Provincial legislatures remained aloof save in Bihar, U. P. and Bombay. It met as scheduled on the 9th December 1946 without the representatives of the Muslim League and the States at New Delhi. It was meet and proper that this august body should meet at Delhi, a place sacred to memory, consecrated by legend and immortalised by history. This grave of many mighty Empires became the cradle of India's freedom and liberty. Dr. Sachchidananda Sinha, the temporary chairman in his thought provoking inaugural address held up a constitution of adamant strength reared for immortality as the ideal. Though a number of congratulatory messages were received from far and wide wishing the constitution making body every success, British government kept mum and did not send even a formal message.

In spite of the fact that the Constituent Assembly of India came into being with certain limitations, it was a self governing and self determining body, subject to no outside authority. In his explanation Lord Pethick



Lawrence admitted that the powers of the Constituent Assembly were unlimited when once it began to function. It functioned as a sovereign body determining its own procedure. Pandit Nehru's resolution defining the fundamental objectives of the Constituent Assembly was quite appropriate and essential. The wording of the resolution and the momentous speech made by Nehru moving the same were classic alike for dignity of phrasing and loftiness of thought. The Pandit's speech was a grand performance and those who listened to it were struck by its powerful and persuasive appeal. Even critics like Dr. Jayakar and Dr. Ambedkar paid high tributes to the statesmanlike utterance. It is inconceivable that any constitution could be framed without a directing object. This has been the procedure followed by the Constituent Assemblies elsewhere. It was in the nature of an oath as Pandit Nehru aptly put it. The constitution of an independent India could not but be a Sovereign Republic. The voting over this resolution was however postponed to enable the Muslim League and the States to come in and participate in the discussions at the second sitting. As the League did not attend the second sitting the resolution was

unanimously passed. Several important committees set up by the Constituent Assembly naturally settled down to work.

The final resolve of Britain to quit India before June 1948, was indeed historic. Transfer of power was contemplated in the meantime whether Cabinet Mission's plan was worked out or not. This announcement made some of us rub our eyes with astonishment. The late Mr. Bulabhai Desai once half humourously observed that he was prepared to make a present of our sterling balances to Britain, if she would quit India. It was a wise and courageous decision. It was expected to bring about a realistic attitude. The plea that third party was playing one against the other was no longer tenable. The Constituent Assembly at its third sitting set up two committees one to report on the principles of the Union constitution and the other on a model Provincial constitution. The Assembly unanimously approved the clause that the Indian Union should not confer any titles. On 2-5-47 it adjourned *Sine die* after considering the Sub-Committees' report on fundamental rights. The suggestion of the President Dr. Rajendra Prasad, that the constitution should be written



in Hindustani and English was accepted by the Assembly.

But the propriety of adopting Hindustani is subject to serious doubts. It seeks to embrace Hindi and Urdu alike. It still remains to be evolved with definite terminology and single script. Other Indian languages specially those of the South with vast literature extending over centuries are not likely to submit to this upstart. Hindustani has neither the stature of Sanskrit nor the utility of English. Dr. Kailas Nath Katju and Dr. C. R. Reddy have begun to champion the claims of Sanskrit to be the State Language. They contend that a state language need not be a spoken language since English during the British period and Persian during the Moghul regime were not spoken languages of India. Secondly, Sanskrit is rich in vocabulary and is taught in most of the Premier Universities of the World. Since it is the foremost classical language and is indeed the source of most of the Indian languages, it commands the respect of all the linguistic groups alike. There will be no scope for local patriotism or undue advantage of one group over the other. On account of its cultural wealth, maturity, historical antecedents and

hold on the people Sanskrit can legitimately take the role of India's National language. Its claims may be ignored but they cannot be refuted. Though the suggestion may sound fantastic and appear to be beyond the range of practical politics it must be considered by the powers that be, with the attention it deserves.

## Chapter XXIV

### THE MOUNTBATTEN PLAN

LORD Mountbatten came to India as the last Viceroy with the avowed object of liquidating the British rule and effecting transfer of power here and now. After final discussions with the British Cabinet, he announced his plan on 2-6-1947. The Proposals provided two Constituent Assemblies, partition of the Punjab and the Bengal, referendum in the N. W. F. Province and in the Sylhet District of Assam and power to the governor-general to initiate negotiations regarding administrative consequences of partition. So far as the States were concerned the Cabinet Mission's plan was retained. Pandit Nehru, Mr. Jinnah and



Sardar Baldev Singh on behalf of the Congress the Muslim League and the Sikhs respectively reacted favourably towards this plan.

It is the biggest master stroke of British diplomacy. The Congress and the Muslim League could not reject it. It offered each party a semblance of success. As there was no other go, both the parties had to accept it reluctantly. Of the two Indias that Britain left behind, if one was smaller and weaker that might satisfy the other. Incidentally the weaker one might be induced by the very strength of the rival to seek continued support of the outside friends. Split and quit is the result of divide and rule policy successfully pursued by Britain throughout the World. In the fitness of things Mr. Winston Churchill who opposed Cabinet Delegation's Proposals approved the Mountbatten Plan. The withdrawal of British Power in Ireland, Egypt and Palestine had similar consequences. The Indian Independence Act was rushed through the British Parliament in pursuance of the Mountbatten settlement. The absence of any kind of provision to prevent acts of aggression or hostility on the part of either of the Dominions against the other is indeed a fatal defect

in this Act. Secondly, the omission to prescribe an authority to perform the functions of securing public peace and good government in a State disturbed by internal disorder and failure of the administration is another major flaw.

On 5-6-1947 a Cabinet Sub-Committee consisting of Pandit Nehru, Sardar Patel Mr. Liaqat Ali Khan, Sardar Abdur Rab Nishtar and Sardar Baldev Singh was appointed by the Viceroy to consider the problems connected with partition. Again on 16-6-47 a Special Cabinet Committee consisting of the Viceroy, Sardar Patel, Dr. Rajendra Prasad, Mr. Liaqat Ali Khan, and Sardar Abdur Rab Nishtar was set up to conduct and co-ordinate detailed investigations on the problems arising from the administrative consequences of partition. The key-stone of the administrative set-up was the Steering Committee consisting of two Officers, Messers. H.M. Patel and Mohammad Ali, each representing respectively, the successor governments of India and Pakistan. This committee was the link between the Partition Council, which succeeded the special cabinet committee with the addition of Mr. Rajagopalachari



and Mr. Jinnah respectively to the team on behalf of India and Pakistan and the Expert Committees numbering ten which were extra departmental bodies and were called upon to submit their reports. It was the function of the Steering Committee to ensure that concrete proposals were evolved in time, that these proposals were dovetailed with each other to form a comprehensive whole, that Partition Council's orders were obtained and these orders were implemented in time. Rarely have so many controversial issues between contending neighbours seeking separation from each other have been settled in so short a time. It was a miracle of concentrated effort and consummate ability. On 20-6-47 the members of the Bengal Legislative Assembly from the non-Muslim majority areas voted for partition of Bengal in terms of the Mountbatten settlement. The Punjab too returned a similar verdict. On 30-6-47 the personnel and terms of reference of the Boundary Commissions for the Punjab and Bengal were announced by the governor-general. Both the Commissions were composed of High Court Judges with a common chairman (Sir Cyril Radcliffe) who acted as a co-ordinating

link. While the chief basis for determining the new boundaries should be the principle of contiguous Muslim and non-Muslim majority area, the Commissions were specifically instructed to take other factors into account.

Subsequently in the referendum Sylhet opted for Pakistan and in the N. W. F. Province a peculiar situation was created by the demand for Pathanistan. The voters for free Pathanistan abstained from voting as their demand was not in issue and thus avoided possible clashes. Ultimately a little over half the total number of voters who participated in the referendum voted for union with Pakistan. As there was no unanimity regarding the decisions of the two Boundary Commissions, the Chairman announced his Award with respect to the Punjab and Bengal which proved to be a veritable apple of discord and caused wide spread communal riots and deliberate massacres leading to mass migration of minorities between India and Pakistan. A sample of the partition of the Punjab is that Quidan the Holy Place of the Ahmmadiyya community of which Sir Md. Zafrulla Khan is the acknowledged leader is included in East Punjab, while Nanaksaheba the birth place of Guru Nanak



founder of Sikhism is located in West Punjab. The Canal Colonies, wherein the Sikhs invested heavily were included in West Punjab. As a result of partition, West Bengal is cut into two parts with a round about passage through Bihar. The Jute Mills are in West Bengal while the jute is mostly grown in East Bengal.

The whole scheme of partition proceeded on communal basis. Even the Indian Civil Service had been divided on communal lines pure and simple. From the Official Communique it was learnt that roughly 425 non-Muslim members including 40 Europeans and only 12 Muslims had elected to serve the Indian Union after 15-8-1947 and roughly 78 Muslims and 30 Europeans elected to serve in Pakistan after that date. It is apparent that no Hindu consented to serve in Pakistan and only 12 Muslims (who could not be absorbed in Pakistan) continued to serve in the Indian Union much against their will. Similarly the personnel of the Army, the Judiciary and other important Services opted to India or Pakistan on communal grounds.

Though it was originally agreed that Lord Mountbatten would be the common governor-

general for both the Dominions and Chairman of the Partition council and the Joint Defence Council, Mr. Jinnah at the very last moment insisted on his appointment as the Governor-General of Pakistan. It was something like snatching the Crown and crowning one self. It was indeed the signal for parting of the ways. Thus the era of co-ordination and co-operation gave way to conflict and strife. Later the Supreme Command was terminated, the Joint Defence Council was abolished and the Partition Council came to its natural end.

## Chapter XXV

### TWILIGHT OF FREEDOM

AT this juncture the British decision to withdraw from India voluntarily, when the French with their slogans of liberty, of equality and fraternity were opposing Viet Nameese claim for independence, the Dutch were playing the role of last ditchers in Indonesia, the Russians with their mission to end exploitation had resorted to Red-Napoleonism and the Americans with their professions of philonthrophy and charity were trying to bring the whole World under the



sway of the Dollar, was classic alike for wisdom courage, dignity and statemanship. The transfer of authority in India is the biggest and least bloody of all transfers in human history.

In the new set up the Native States too stood released from the hold of Britain's suzerainty which became extinct at once. The States were thus free :

(1) To join the Indian Constituent Assembly and to become members of the Union of India as provided in the Cabinet Mission's plan, or

(2) To go into the Pakistan Constituent Assembly and there do likewise, or

(3) To stay out of the both and make "Particular political arrangements" (by means presumably such as treaties, pacts, etc.) with either or both the Dominions, or

(4) To keep floating in mid air, boasting of their isolation and independence. But Britain would not let the States enter the British Commonwealth separately as Dominions. (Lord Mountbatten's Press conference dated 4-6-1947.)

Lord Mountbatten's speech to Princes and Dewans on 25-7-1947 was frank and persuasive though he took care to avoid reference to the rights of the people of the States. His Excellency pointed to the impossibility of escape for

the States from compulsive contact with the Indian Union. Sardar Patel too facilitated the climb down of the Princes by his conciliatory appeal. But the concessions made to the Princes rightly excited doubts and fears. The instrument of accession makes melancholy reading. In the first place there is studied omission of all reference to the People of the States. This is a sad commentary on the Constituent Assembly's resolution proclaiming the doctrine of sovereignty of the people in enchanting and heroic phrases.

A clause to the effect that the Ruler accedes to the Union in pursuance of a resolution of his State's legislature, or at least on behalf of the people of his State should have been introduced into the instrument of accession. Secondly clause 7 of the instrument leaves the Ruler free to accept or not any future constitution of India. For the full significance of this freedom, we have to turn to the suggestion let fall by the Attorney-General Sir Hartley Shawcross in the British House of Commons to the effect that the Ruler of a State is entitled to make his State's entry into the Dominion conditional upon the Dominion's pledging itself to remain within the British Common-



wealth for all time. Evidently this clause is intended to make it difficult for India to go out of Britain's sphere of influence. Thus the States are induced to be a drag and a dead-weight upon India. What is more the instrument of accession provides for accession by the States with respect to Defence, Foreign affairs and Communications only. The need to widen its scope is imperative. However, there is a chance to net the States in for the Union. But calculations sometimes get upset in the field of Practical Politics.

The provision for a stand-still agreement between the States and the Dominion of India to be accepted immediately, on financial and economic matters is noteworthy. But the omission of political relations may lead to grave harm, as the conditions in the States are far from quiet. Whenever serious trouble breaks out the Union government should not find itself unprepared for the emergency. It is interesting to recall that Pandit Nehru speaking at the A. I. C. C. meeting on 15-6-47 claimed what he calls "inherent paramountcy" for the Dominion government: "There is a certain inherent Paramountcy in the government of India which cannot lapse, an inherent

Paramountcy in the Dominion State in India which must remain because of the very reasons of geography, history, defence etc., which gave rise to it when the British became the dominant power in India, if anybody thinks that it lapses then those very reasons will give rise to it again." Therefore the creation of a political vaccume for any State or States is not contemplated as it is neither possible nor feasible.

From 15-8-1947, the Union of India and Pakistan began their careers independently. While Pakistan aims at Islamic Democracy under a single party rule, India hopes to remain a Secular State. The conditions of the minorities in both the Dominions became utterly hopeless and intolerable in spite of the strenuous efforts of both the governments. Subsequent events in Pakistan and India left a trail of utmost bitterness and constitute a spectacle of cold blooded cruelty and unimaginable tragedy. The sixty mile long refugee convoys that passed between India and Pakistan startled the World. The transport, escort and the rehabilitation of these unfortunate people proved to be a colossal problem defying solution to both the Dominions. Mahatma



Gandhi answering a question prophetically observed thus : "This much I certainly believe that the coming August 15th should be no day for rejoicing, whilst the minorities contemplate the day with a heavy heart."

## Chapter XXVI

### THE PROBLEM OF MINORITIES

THERE is no gainsaying the fact that the sudden and the dramatic withdrawal of the British power resulted in an unforeseen and unprecedented crisis. The legacy of animosity ill-will and strife left by them began to assert itself actively and aggressively. It is a notorious fact that the British in order to strengthen their position skilfully played one class against another class, one community against another community and one interest against another interest, from time to time with the result that the same temper continued even in their absence.

It is also necessary to note the character and composition of different elements in India. Hindus are a community of people or rather peoples with diverse tastes, temperments and

aptitudes. But their tolerance and catholic outlook tends to forge a sort of loose unity. They are emotional and are capable of rising to heights and incidentally loose sight of the grim realities. The Christians, Sikhs and the Parsis have more in common with the Hindus than with the Mussalmans. Though the vast majority of the Muslims are of the same racial stock as the Hindus they take pride in tracing their connection with Arabia, Persia or at least Afghanistan. Their outlook on life and of life, moral values and material standards codes of conduct and cannons of interpretation are primarily moulded by their religion. Their violent entry into India, subsequent domination and forced conversion of the sons of the soil to their faith left a trail of bitterness in the minds of the Hindus. Islam is essentially militant and consequently intolerant. The association of democracy with Islam is solely confined in its application to the Brothers-in-Faith. Their system of administration has alalong been theocratic and arbitrary. Even the late Kamal Pasha who succeeded in Westernising Turkey and established a Secular State did not hesitate to exterminate the Armenian minority on their refusal to accept



Islam. The inability of the Hindus and Muslims to combine and coalesce and live together resulted in clash and conflict and brought about a national crisis in both the newly created Dominions.

Accident of birth and choice of faith determined the course of events. The remedy of partition proved to be worse than the disease of disunity. Irrespective of the fact that who started the conflagration the spirit of revenge came to the forefront to take its toll. Under stress and strain retaliation becomes the natural law of life. Tolerance and charity flourish only in normal times. In abnormal times these virtues often degenerate into inaction and defeatism. But retaliation to be effective and successful should at governmental level.

In spite of the tall talk about secular humanism and scientific progress, States continue to exist on racial basis and religious bias. Catholic Eire and Protestant Ulster still remain apart in spite of the common nationality. In the various countries of Europe the Jews could not be absorbed in spite of their stay for over centuries and have always remained a distinct community. The chief motive of the U. S. A. in coming to the rescue of Britain during the

two World Wars is that both are English speaking Democracies with Anglo-Saxon ancestry. The Arab countries of the Middle East have put up a united front on the problems of Palestine. When Russia was attacked Marshal Stalin casting aside his communist ideology made an emotional and soul stirring appeal to his countrymen in the name of the fatherland. The Jewish State in Palestine is named as the State of Israel.

Since India is also divided on communal grounds, the outlook of both the Dominions is bound to be influenced by that cardinal fact. Minorities who are not prepared to settle down as loyal citizens unreservedly should go to the Dominion where they can play a useful role and rise to their full stature. Those that choose to remain willingly as a minority should be given every possible protection. The State should be just and even generous to them. While discouraging mass migrations there need be no bar to entertaining the incoming refugees. The attitude of Pakistan in banning the entry of refugees other than those from East Punjab is inexplicable, when it was really the Muslims of the Indian Union that agitated and got Pakistan.



Mr. Chowdhry Khaliquzzaman the Spokesman of the Muslim League declared that Pakistan would serve as a spring board for further demands. He even demanded separate electorates for his community in India on the floor of the Indian Constituent Assembly. An Ali-gharh Professor writing in a Punjab Journal declared that : "The fifty million Muslims who have been forced to remain in Hindu India would have to fight another battle for their freedom." Even the Muslim urchins in Karachi were reported to have paraded the streets shouting : "Laughing we have taken Pakistan and fighting we shall take Hindustan." Not long ago some prominent Muslim League leaders of Bihar demanded that the Muslim majority area in the Purnea District of Bihar be amalgamated now or never, with Eastern Pakistan though Bihar was no party to territorial redistribution. Can such Leaguers demanding the disintegration of their Province, ever prove to be true Biharees or true Indians? Similarly the demand for Mopla-stan by the Muslim population of Malabar passes one's comprehension. Muslims from the Indian Union migrated to the Hyderabad State presumably to bolster up the Power of the

Nizam. Curiously the Indian Muslims are silent on the attitude of Pakistan over the crucial issues like Kashmir, Junagadh and systematic and ruthless extermination of minorities in Western Pakistan.

On account of similar incidents the loyalty of the Indian Muslims still remains to be tested. In the first place they should clearly and categorically answer the question posed by Pandit Govind Vallabh Pant: "Whether they would be ready and willing to fight Pakistan in the event of a War between India and Pakistan." Secondly they should give up extra-territorial patriotism incidental to Islamic brother-hood. While professing Islam in Private life they should always act as Indians in Public life. As an earnest of their desire to be assimilated and united they should learn the Devanagari script, participate in the social life and the festivities of the majority community and adopt the regional dress and the language. Their communal organisations should be liquidated and they should join the Nationalist parties having a political or economic background. The only effective safeguard for a minority is the good will of the majority.

Similarly the non-Muslims in Pakistan



consistently opposed Partition and strived hard for a united India. Therefore they are bound to be suspected as veritable fifth columnists. Since there is no indigenous national organisation in Pakistan it is not possible for them to have public life worth the name. The attempts of Khan Abdul Gaffar Khan, the Frontier Leader, to found a Peoples party in Pakistan were nipped in the bud. They cannot expect the status quo to be maintained. While that is the situation no amount of allegations and counter allegations, charges of breach of faith or wilful fraud will lead us anywhere. What is needed is amicable adjustment between the two Dominions. In order to solve the problem of minorities, we are often asked to follow the Canadian approach, the Russian method or the Egyptian example. But the fur coats of Canada, the woolen shirts of Russia and the Egyptian Pasha's Wardrobe is of no avail in India where the political temperature is 110 degrees. Hence any proposed solution should be consistent with the realities of the situation. The basic problems like poverty and unemployment, disease and death illiteracy and industrial backwardness are common to all who inhabit a country

irrespective of caste, creed, community or clan. Moulana Abul Kalam Azad's suggestion that both the Constituent Assemblies should adopt a common charter of protection for the rights and interests of the minority communities is commendable. Mr. H. S. Shurawardy too emphasised a similar approach. If the problem is to be solved successfully there should be some more heroes in both the Dominions ready and willing to lay down their lives like Mahatma Gandhi for the cause of the suffering minorities.

It is necessary that both the Dominions should adopt common measures to assure fair play and friendly consideration to minorities. Education should be secularised and denominationism in the schools, colleges, hostels and clubs should be discouraged. Joint enterprises among members of various communities in fields of trade, commerce and industry should be encouraged. Organisations of workers based on religion should be banned. Results become perceptible only after some years of perseverance. For successful pursuance of these and other similar measures Inter-Dominion co-operation and collaboration is essential.



## Chapter XXVII

### THE HYDERABAD ISSUE

HYDERABAD from the beginning refused to go into either Constituent Assembly. People had for years seen the ways of Hyderabad and learnt what to expect of that State. There had been ferment in the State for years. But the authorities have alalong been indifferent to it. Sir Mirza Ismail found it too hot to remain there. The arrival of the Nawab of Chattari who was discredited earlier did not improve matters. The intrasigence of the Majlis with their private army, the Razakars made one think that either the Nizam was in full sympathy with them or he was helpless to control them. He seemed to have abdicated in their favour. Above all, the description of Hyderabad as an Islamic State passed one's comprehension. The interim administrative arrangement wedded to parity between the Muslims and the Hindus violated all cannons

of democracy, equity and justice.

The conclusion of a Stand-Still Agreement between Hyderabad and India for one year merely postponed the evil day. Incidentally it recognised status quo and indirectly admitted that Hyderabad was a special case. It could not be helped. In the first place the Kashmir affair loomed large. It was not simple as Junagadh, where the Nawab acceded to Pakistan. However, government of India paid a big compliment to the Nizam by appointing a person of Mr. K. M. Munshi's political stature and administrative experience as the first Agent-General to Hyderabad. Far from appreciating this gesture and receiving the Indian envoy with warmth and dignity the Nizam's government actually tried to raise obstacles in the most silly fashion to his early arrival and assumption of duties. They virtually denied him the accommodation befitting his status. The manner was inconsistent with the intention to work the Stand-Still Agreement. The lengthy correspondence that passed between the Nizam and the Governor-General over the temporary occupation of the Residency by Mr. Munshi indicated that a diplomatic rupture was averted by the tact and firmness



of Lord Mountbatten.

A little later, the Nizam granted a loan of Twenty Crores of Rupees to Pakistan. What is more, Mr. Ghulam Mohammad, Finance Minister to the government of Pakistan was granted a pension of one thousand rupees per month. Though Mr. Ghulam Mohammad happens to be an ex-servant of the Nizam's government, his present connection with the government of Pakistan which is not altogether friendly with the Indian Union did not warrant reward from the Nizam at a time when delicate negotiations were being conducted on his behalf with the Indian Union. Above all Nizam's Ordinance demonetising the Indian rupee and prohibiting the movement of the precious metals from the State surprised one and all. Besides the incidents in the boarder areas of the State assumed alarming proportions.

The assertion of independence by the Nizam calls for scrutiny. It is important to bear in mind that the Nizam was originally a representative of the Moghul power in the Deccan. Though he practically got rid of the Moghul suzerainty, he was defeated and captured by the Maharathas. Though he stood by the

British during the Mysore Wars and the Sepoy Mutiny he was repeatedly reminded by the successive Viceroys that his position was precisely that of other great Indian feudatories. The inefficiency of the Muslim oligarchy had even compelled the British Raj to insist on the Nizam's receiving British Officers from time to time. The tall talk about the return of the Ceded Districts and the Circars is mere moonshine. His sovereignty over Berar even while he was a prize boy of the British power was more fanciful and technical than real.

Indian Union too cannot tolerate an independent Sovereign State within its borders. Mir Laik Ali also in his address to the members of the Hyderabad Legislative Assembly on 29—4—48 admitted: "Situated as Hyderabad is, it is obvious that we should have close links with the Indian Union. Geographically and politically it has to be in close association with the Indian Union. In matters of Defence, External affairs and Communications it must have a close understanding with the surrounding country." Under these circumstances the natural issue could only be accession or some sort of subsidiary association as Pandit Nehru pointed out on 1—5—48 in his Press conference



at New Delhi.

One fails to understand the necessity to refer to the Hyderabad situation in the British Parliament during a debate on Foreign affairs. In the course of the debate on 4-5-1948 Mr. R. A. Butler, a former Conservative Cabinet minister pleaded that Britain should take the opportunity of pressing, "The just claims of Hyderabad to be independent, if she wished to be independent and if so desired to be a member of the Commonwealth herself." Mr. Butler was evidently worried over what he called the "Rather Warlike and undesirable language" used by Pandit Nehru. What was more he smuggled the word 'annexation' in the place of 'accession' insisted on by Pandit Nehru. The Prime Minister Mr. Attlee too, in his reply while refusing to embroil his government in an issue with which they were not concerned, referred to Hyderabad as another delicate matter involving the relationship between the Nizam and his subjects and also between two major communities. Later on 23-6-1948 the British government rightly rejected a request by Mr. Winston Churchill that it should offer its services as mediator in the dispute between India and Hyderabad.

Any reference to Hyderabad issue after 15-8-47 by the British statesmen was unwarranted. It was purely a domestic issue to be decided by India and Hyderabad. Mr. Jinnah and Sir Md. Zafrullah Khan not only supported the stand of Nizam to remain independent but also stated that the sympathies of Pakistan and other Islamic Countries were with the stand taken by the Nizam. But the move of the followers of the Ittehad-ul-Muslimeen to gain support from Pakistan reduced them to the position of veritable fifth columnists. Dr. Henry Grady, American ambassador in India referred to Hyderabad as a parallel to Indonesia at the Ooty Session of E. C. A. F. A. The suggestion was both mischievous and misleading.

The Nizam declined to accept the personal invitation extended to him by Lord Mountbatten to visit Delhi. Probably he was afraid that the meeting would not be restricted to an exchange of personal compliments but the occasion would be used to iron out differences between his government and the Indian Union. Besides, his direct invitation to Lord Mountbatten to visit the State violated constitutional propriety since the acceptance was conditioned



by Cabinet's approval. The proper course for him would have been to send the invitation through the Union Government. The draft agreement reached after protracted negotiations between the representatives of the Government of India and the Hyderabad delegation had not been accepted by the Nizam. After the break down of these parleys Government of India took a firm stand. Security measures in the border area were intensified. The raiding Razakars were chased and dealt with severely upto a limit of three miles within the State territory. The Nizam tactfully withdrew the Police and Military from the three mile border belt.

The situation deteriorated from day to day. Gun-running to Hyderabad by Air became open. Nizam sent a letter to King George to intervene on his behalf. But the British Sovereign rightly advised him to come to terms with the Government of India. The mediation of Sir Mirza Ismail came to nothing. On 25-7-'48, Pandit Nehru made a historic speech at Madras wherein he declared that any military operations against Hyderabad would amount to Police action. Evidently the operations against Hyderabad could not consti-

tutionally be styled as War. The White Paper on Hyderabad issued by the Government of India on 9-8-48 fully exposed the Nizam and his henchmen. Rajaji's last minute's appeal to the Nizam to disband the Razakars and to assume personal responsibility for the governance of the State proved futile. On 7-9-48 Pandit Nehru announced in the Dominion Parliament that troops would be sent to reoccupy their positions in Secunderabad to restore order in the State. Simultaneously Nizam's complaint to U. N. O., following queer procedure, was circulated among the members of that august body. The Nizam in his letter dated 8-9-48 to the U. N. O., asked that the dispute of Hyderabad with India be referred to the International Court of Justice. The Hyderabad delegation flew to Paris to plead the cause.

With clock like regularity and mathematical precision, Indian troops crossed the State border at three points on 13-9-48 in the small hours of the morning. They were followed by the Police and Civil administrators. The action was short and swift. The death of Jinnah at this juncture dashed all hopes of aid and assistance from Pakistan. The Nizam



opened his eyes and ordered cease-fire on 17-9-48. Consequently the Indian Military took over the administration. The Nizam directed his delegation to withdraw the complaint from the U.N.O. But the discredited delegation under the inspiration of Pakistan persisted in its pursuit. Sir A. Ramaswamy Mudaliar, the spokesman for India smashed the case for Hyderabad in terms that were definite, in a terminology that was telling and in a voice that was stentorian. He vindicated the stand of India before the Bar of World opinion with credit and distinction. In spite of his repeated declarations to the contrary Nizam was represented abroad as functioning under duress. Churchill with his inimitable skill to exploit every conceivable opportunity to tarnish the reputation of India referred to India's operations in Hyderabad, which had been welcomed by the Nizam as much as the tormented people of the State as an act of deliverance from the clutches of a terrorist Junta, as a violent arbitrary act of aggression which had engulfed Hyderabad. The retention of the Hyderabad issue on the agenda of the U. N. O., is a strage anomaly.

With regard to the future of the State, the:

choice is left to the people to be expressed through a Constituent Assembly duly elected on adult franchise. Hyderabad has neither the cultural unity nor political personality. Its claims to be a geographical entity are untenable. Its economy is intertwined with that of the surrounding Provinces. It would be unwise to perpetuate the anachronism. Experience extending over seven generations eliminated enthusiasm and good-will for the continuence of the ruling dynasty. Disintegration of the State and its merger with the adjoining Provinces seems to be inevitable.

## Chapter XXVIII

### LINGUISTIC PROVINCES

THE existing Provinces are not constituted on any rational lines. They grew and multiplied as the British rulers acquired one part of the country after another. The primary consideration was the administrative convenience under a bureaucratic set-up. But gradually subnationalism became vocal. The demand for the formation of provinces on linguistic basis is nearly forty years old. The



separation of Bihar, Assam and Orissa from Bengal showed the way. The formation of Sind and N. W. F. Province was due to communal rather than linguistic considerations. Andhras who constituted the third biggest linguistic group before partition and occupy second place after partition have naturally become impatient. Kannadigas, Maharastrians and the Malayaleese followed suit. The Tamilians and the Gujaratis prefer to be the residuary legetees. The Bengali speaking area of Bihar should logically revert to West Bengal.

It is necessary to note the needs of a democratic administration. Linguistic Provinces help to carry on administration in the provincial languages. The individuality of the cultural unit concerned will be safeguarded. The newly won freedom will have meaning to the people when it provides them full opportunities for self expression.

The demand can be opposed logically and effectively by suggesting that all provincial boundaries and distinctions should be abolished and that India should be a Unitary State. Mr. Manu Subedar supported this proposition on financial grounds. According to him most

of the Provinces have exhausted their balances and their expenditure now amounted to 250 Crores of Rupees. In spite of the additional grant of 30 Crores of Rupees and the additional yield of new taxes there is search for more taxes in every province. It is likely that the total provincial budgets according to his estimate might reach the stupendous figure of 400 Crores of Rupees in the next five years. In addition to increasing expenditure at the Centre, India cannot afford this extravagance. Some day there would arise the necessity for putting the brake indiscriminately so as to leave the country with a large mass of incomplete and partially begun plans and programmes. But this thesis runs counter to all ideas of the people and to all professions of freedom and democracy.

Dhar Committee appointed by the President of the Constituent Assembly of India to report on this question summarised the points against this demand thus. In the first place they breed intolerance against the minority speaking a different language in the same area. Secondly they emphasise parochial patriotism. Thirdly bitterness will be caused by the marking of the boundaries with reference to the cities of



Madras and Bombay. Fourthly sub-national bias will militate against welding India into one nation. Fifthly any concession for the demand may lead to similar demands from other parts of India. Sixthly if India is to survive till nationalism has acquired sufficient strength to permit the formation of autonomous provinces the true nature and functions of a province under the constitution should be that of an administrative unit functioning under delegated authority from the centre and subject to centre's overriding power.

It is stressed that nationalism and sub-nationalism are two emotional experiences which grow at the expense of each other. In a linguistic province sub-nationalism will be a dominant force and will evoke better response and in a conflict the nascent nationalism will lose ground and may even be submerged. In the present state of emergency when urgent problems like Defence, Refugees, Inflation, Production and Food are pressing for a solution, it is inopportune to raise this issue. But even after this emergency, the Provinces according to the Report should be formed not on linguistic considerations but on administrative convenience. Very often linguistic and

administrative convenience may coincide. Of course in case of conflict the latter should prevail. But when the necessity of Provinces is once accepted it is difficult to say that why they should not be reconstituted on rational lines. It is too late in the day to suggest that the federal idea should be scrapped.

Subsequently the three-man Committee consisting of Nehru, Patel and Pattabhi appointed at the Jaipur Congress unanimously recommended the postponement of the formation of the linguistic provinces to avoid strain on the administrative machinery and conflicts and passions in bilingual areas. However, the demand of the Andhras was conceded to the extent of forming a Province consisting of eleven admittedly Andhra Districts on the condition that they should once for all abandon their claim over the City of Madras.

Unfortunately a lot of passion and prejudice is abruptly created against this demand. Mr. K. M. Munshi went to the extent of equating Linguism with Hitlerism and Fascism and warned that unless people fought it, it would become a menace to India's newly won freedom. But Mr. Munshi himself was an active supporter of the demand for unification



of all Gujarati speaking areas into one province till the other day. Pandit Nehru and Sardar Patel publicly proclaimed this slogan for linguistic unification as a danger to unity and integrity of India. But they seem to forget that it is an old demand accepted and sanctioned by the Congress and hallowed by top ranking leaders including the Father of the Nation. It was one of the basic demands in the national struggle. Curiously this demand has suddenly fallen into disrepute and a number of sinister motives are read into it.

It may be that the demand has intensified provincial quarrels, jealousies and antagonisms. The failure to solve the question in time may strengthen all these undesirable and harmful feelings and make the relations between the different linguistic groups more strained and bitter. At the same time the existence of the States in some form or other stand in the way of a whole-some solution of the problem. Merger of all the States is a condition precedent to a rational redistribution of provinces on linguistic basis. The primary reason that this is not the proper time to tackle the issue as the country is passing through a crisis and has to face a number of more important and

complex problems is understandable and valid at this juncture.

## Chapter XXIX

### THE COMMONWEALTH RELATIONSHIP

COMMONWEALTH is a typical British institution. Its origin may be traced to the Queen's Jubilee in 1887 when a spectacular gathering of one hundred and twentyone delegates representing the various parts of the far-flung Empire paid their homage to the Crown. It merely grew according the exigencies of the situation. It began as an intimate association of Anglo-Saxon communities in the three continents of Europe, North America and Australia. Then the Dominions were the junior members of the family subservient to Britain particularly on questions of foreign policy. The inclusion of South Africa in the list of Dominions after the Boer War introduced two new factors viz., (1) The majority of the Europeans there are not Anglo-Saxons and have no bond of loyalty to Britain, (2) It is not a democracy as the coloured population who constitute a preponderating majority have



no political rights. To be frank it was a Commonwealth of the white people exploiting the coloured. Evidently Commonwealth can be what its members want it to be. The addition of Ireland after the first World War brought in a recalcitrant element bent upon breaking the link. It did break the link quite recently.

The Statute of Westminster recognised that the Commonwealth was not an association of nations dependent on Britain, but a fellowship of equals. The right of secession was recognised though the Dominion of Canada, Commonwealth of Australia, Newzeland and Newfoundland rejected the same. In the case of Newfoundland Britain assumed the responsibility for its administration when there was financial breakdown. Now it is a province of Canada known as Newland. So far as participation in War is concerned membership of Commonwealth does not make it inevitable. During the second World War, South Africa rejected neutrality by a very close vote, and Eire remained neutral throughout. Only the Anglo-Saxon members have emotional attachment to the Crown.

Though the Commonwealth is not a Super-

State, it is logically correct to say that an independent republic cannot be a member of this body. But it is such a loosely knit organisation that it can be all embracing. Its genius is its elasticity. Legal difficulties and constitutional conundrums cannot check organic growth. In this connection it is interesting to recall what Prof. A. B. Keith, a great authority on constitutional law wrote as early as 1938: "If no place can be found in the British Commonwealth for Republics then the enduring character of the Commonwealth may be doubted." Thus it is a movement and not a position, a process and not a result, a growing tradition and not a fixed revelation. The recent decision of the Commonwealth Premiers Conference to permit the Indian Republic to be a full and equal member fits in with this dynamic conception.

In this connection the evolution of the Privy Council another typical British institution is also significant. The membership of this august body is primarily British in the narrow sense, though all the Judges of the superior courts in the Commonwealth are eligible if they are Privy Councillors. As a matter of fact no appeals go to the Privy Council from



South Africa and the exercise of the prerogative in 1934 (Ref: Pearl Assurance Co., V. Government of the Union of South Africa) raised a storm of protest. Appeals from Australia lie to this body only on a certificate from the High Court and such certificate is withheld as a matter of principle and granted only once in a while. Appeals lie from Canada not as a matter of right but by grant of special leave by the Privy Council in exercise of Royal Prerogative. Lately India too abolished right of appeal to this body. Still its prestige has not diminished. Imitation of its traditions and respect for its precedents is a matter of common experience throughout the Commonwealth. Thus the loss of its power is compensated by the spread of its influence.

The creation of the Dominions of India, Pakistan and Ceylon proved to be a turning point in its history. Now it bridges the continents and promises to reduce the danger of clash between the East and the West. In partnership each can exercise more influence than either can alone. The existence of Asian members may tend to blunt the edge of racial animosity in its outlook and policies. Right to differ while remaining in close association

is part of its strength. What is the role of this commonwealth? According to General Smuts, (Vide his broadcast to the Empire Students on 23-5-48) it is the most successful experiment in World Government. Mr. De-Valera feels that the Commonwealth group of nations and their associates can well prove to be a power in establishing World peace and security and contribute to the material progress and prosperity of Nations. (Vide his press conference at New Delhi on 15-6-48). In the words of King George it is a brotherhood of nations (vide his welcome to the Commonwealth Premiers in October 1948.) Pandit Nehru in his address to the Consambly emphasised that "The Commonwealth with all its imperfections represents a system of international co-operation."

The die is cast and India is committed to remain in the Commonwealth as a Sovereign Independent Republic. What are the considerations that influenced the choice? India like Britain cherishes certain Ideals-the ideal of democracy, the rule of law, general sence of fairness, faith in non-aggression, belief in a common destiny for man. Severence from the Commonwealth would create a vital breach



in the global anti-Communist front. As matters stand India is afraid of isolation. The experience of Burma since its exit from the Commonwealth has been very unhappy. Ire by opting out of the Commonwealth perpetrated partition and gave a final blow to all hopes of Re-Union between Ire and Ulster. "It is not desirable to break contacts and links and seek isolation," as Nehru put it. It is the path of wisdom to explore the possibilities without succumbing to past prejudices. To say that we should not be part of the Commonwealth is to close our portals against wider contacts. It will be stronger as it fulfills its mission of widening the bounds of freedom. The other members of the Commonwealth in their own interest are anxious for the continuence of India's membership. It is the growing shadow of Communism that prompts these countries to hug India at this juncture. The Indian hand that looked like a twig so long has suddenly become an Olive branch. The quick rise of Nehru in the estimation of Daniel Malan and Winston Churchill is significant. Besides history has brought India very close to Britain in institutions, laws and in many ways of thought. There is much of

value in this relationship that ought not to be cast away light-heartedly. The late Mr. Gopala Krishna Gokhale and Sir Phirozsha Mehta used to say that even threat of lynching would not dissuade them from pleading for British connection. Britishers too developed a sort of sentimental attachment towards India. In 1786 Warren Hastings recommending a translation of the Bhagawad Gita to the President of the East India Company declared that, "The Writers of Indian philosophy will survive when the British domination in India shall long have ceased to exist and when the sources which yielded wealth and power will be lost to remembrance." Besides the continued sympathy and support of Britishers for the Indian struggle constitutes a strong link that binds India to Britain. The links that have so closely knit together the people of India and Britain not only remain strong but can be expected to become stronger since they are now bonds of friendship and common interest and no element of compulsion or domination remains.

At the same time doubts and fears are entertained about the outcome of India's association with the Commonwealth. The



value of association to a country must be based on equitable discharge of responsibilities by the nations who form the Commonwealth. It is keenly felt that association with a Commonwealth which is engaged in a colonial war of repression in Malaya and shooting down of Africans on the Gold Coast would be an insult to every tradition of the Indian freedom struggle. The attitude of the British representative in the Security Council on the issues relating to Hyderabad and Kashmir does not inspire the necessary confidence in her impartiality and detachment. White Australia policy is pursued to preserve their tremendous high standard of life. It would be idle to expect a country like India to be reconciled to such a position or to react for appeals for comradeship and brotherliness. Racialism in South Africa is blatant. The South African born Indians are confined to Ghettos with no rights and privileges. What is more the ignorant and the easily inflammable natives are incited to wreck uncalled for vengeance on these unfortunate and helpless people. Evidently no arrangement or machinery which the art of man can devise will work unless there is behind it the proper temper of mind.

The support extended by the British to the Dutch and the French imperialist designs in Indonesia and Indo-China and its role in the Middle East shows that she is not averse to itself and its friends retaining a strategic foothold in Asia. Commonwealth is after all a device to bind the members to new military obligations and ultimately may involve India in a system of Anglo-American policy. It is not just to say that this reading of the situation is influenced by the memories of the painful past. India's absolute independence free from any influence or connection with any group or power is practically ruled out. The possibility of independent action in any emergency would prove illusory and India may be forced willingly or unwillingly to get enmeshed in conflicts which may ultimately develop into a conflagration. The apparent evil results of the membership of the Commonwealth seem to be, (1) to antagonise the Soviet Union (2) to ruin all chances of friendship with the New China (3) to betray the struggle of the colonial peoples (4) to mortgage our economic future to the Sterling bloc. How far the association of the Government of the United Kingdom with her European neighbours under the



Brussels treaty is in accordance with the interests of other members of the Commonwealth?. It is also necessary to remember that Britain and Canada are signatories to the Atlantic pact which is regarded as an aggressive alliance by the U. S. S. R. Under these circumstances, the decision over this crucial issue could have been profitably left to the duly elected representatives under adult franchise. Those who are quick in deciding are always in danger in being mistaken. It looks like an adventure on unchartered Seas.

Constitutionally the position is that the King, though he will have no functions in India, as symbol of free association among member nations will be the Head of the Commonwealth. It is significant that the reference is to the King and not to the Crown. But this headship should have been permitted to be enjoyed by rotation among the members to ensure equality. It is no doubt argued that King as the President is inevitable for with a majority of the members of the Commonwealth owing allegiance to the Crown any other President is inconceivable. But the protagonists of this view seem to forget the obvious fact that India represents three-fifths

of the Commonwealth population. However the major implications are that (1) India will continue to enjoy imperial preference, (2) Within the Commonwealth Indians will continue to enjoy the rights they now enjoy. Both these advantages are of doubtful value. When Britain herself is looking towards U.S.A., for getting rehabilitated, India cannot expect any substantial help from Britain. There is more humour than sense in the assurance that Indians will continue to enjoy the rights they have, at a time when there is glaring discrimination against them in almost all the countries of the Commonwealth.

The reactions are not altogether welcome. Sir Hartley Shawcross, Britain's Attorney-General in a May Day speech said that the British Empire and the Commonwealth had never been a reality than it is to-day. The Prime Minister Mr. Attlee in a parliamentary reply stated that there was no agreement to adopt or exclude the use of any other term 'Commonwealth, British Commonwealth, or Empire. The execution and shooting down of Indian labour leaders in Malaya, in spite of the protests of the Government of India make one think that the Empire spirit contin-



ues to assert itself aggressively. It may be unwise to prejudge any arrangement with prejudice, while the situation is fluid. At the same time there are no cogent and convincing reasons to be completely happy and hopeful about the newly forged relationship at this juncture. Its utility has to be judged in terms of the progress to be made by India and the promotion of World peace and inter-national understanding. Time alone will test this decision. It remains to be seen whether it will prove to be the embrace of Lord Krishna or that of Dhritarashtra !!

## Chapter XXX

### THE FOREIGN POLICY

THE establishment of direct relations with other sovereign nations is the foremost obligation of a free country. The primary function of foreign policy is the protection and promotion of national interests. For all countries, the strong as well as the weak the doctrine of exclusive self sufficient nationalism has been proved to be a dangerous illusion. Peace and prosperity will depend on the extent to which

nations can combine. But a country should be careful in selecting its allies and be guided by reason and not emotion or momentary gain.

India under the leadership of Pandit Nehru evolved a foreign policy of its own long before it became free. Mahatma Gandhi too was accustomed to use the learned Pandit as his yard-stick in computing the international situation. The global outlook of Nehru influenced the trend of public opinion in India. He is an anti-imperialist to the core. Though he is an aristocrat by temperament, he successfully assumed the role of a democrat. But it will be doing less than justice to equate aristocracy with autocracy. India vehemently opposed imperialism and condemned Fascist aggression in China, Austria, Abyssinia, Albania, Spain and Czechoslovakia. While sympathising with the plight of the displaced Jews, India consistently supported the cause of the Arabs in Palestine on ideological grounds. But India's nonrecognition of the State of Israel which gained admission into U. N. O., and whose foreign policy approximates to that of India makes one think that those who mould our policies are probably more Pro-



Arab than the Arab League. It is necessary to note that most of the Arab countries successfully negotiated truce with Israel.

After the dawn of freedom India got ample opportunities to elaborate her foreign policy. Government of India repeatedly affirmed its adherence to the principles of the Charter of the United Nations. She attained signal victory at the U.N.O., against South Africa on the racial issue. Pandit Nehru organised the Asian Relations Conference to explore the possibilities of co-ordinating the progressive forces in Asia against internal reaction and external domination. The Delhi Conference of Indonesia held during the third week of January 1949 was unique in Asia's history. Never before had such a gathering of representatives of Asian countries met at governmental level East of Suez. Again a month later by calling an informal conference of the Dominions on Burma, India retained the initiative in Asian affairs. Thus India is in a position to mediate in peninsular and inland Asia and can be an effective guarantee for World Peace. But the decision of the Commonwealth countries of Britain, India, Pakistan and Ceylon to give whatever support they can to the government

of Thakin Nu whose writ does not run over large parts of Burma amounts to an unwarranted and unwise intervention in the internal affairs of a country in the grip of a civil war. It is hoped that Thakin Nu will not prove to be a Chiang Kai Sheik. India is literally forced to occupy a pivotal position in the anti-communist front in South East Asia. At the same time India is anxious to see that colonial domination is liquidated in the East at the earliest.

The ideological approach is neither infallible nor perfect. There are other factors like race, religion, region and outlook. Historic growth, geographical position, economic ties cultural and psychological make up also should be taken into consideration. To minimise and ignore them would be fatal. Outlining India's Foreign Policy, Pandit Nehru repeatedly observed: "We want to be friendly with every country and follow our own line of policy on every question that might arise remaining neutral on those not affecting us directly. We shall not align ourselves with one group or the other for temporary gains."

India rightly refused to be drawn into the whirlpool of power politics. Keeping aloof



from groups or blocs is no doubt commendable so far as it goes. One need not be afraid of the word bloc, if it is a bloc against war. To stand passively aloof would be neither possible nor morally defensible. The test of India's stature and maturity will be its ability to turn this attitude of neutrality to creative use. But the idealistic approach if pursued to the logical limits may lead us to a stage where we have to plough a lonely furrow. We may then have a few doubtful friends and a host of pronounced enemies. There is of course the Biblical injunction that the meek shall inherit the earth. But such inheritance in the present set up, may take us to some fathoms deep. Our cause may be just, the means noble and the intentions altruistic, still we may fail for want of collective sanctions. Honesty is no doubt the best policy. But calculated honesty alone pays in practical politics.

Our Embassies, Consulates or Legations have already begun to function in forty countries. Since diplomacy has become highly specialised, Government of India instead of merely recruiting people prominent in the public life currying favour with the powers that be should pick up really competent persons from every

quarter. It is no longer a side-show in politeness. It is a life and death affair. Relaxation, aloofness, optimism and dilettantism are dangerous. It must descend from the rarefied realm of conversations and notes into the people's problems. Successful diplomacy depends upon understanding of men both as individuals and in the mass.

India is in evidence and the entire world is watching her demeanour. With China turning Red, Japan under American occupation and the countries of South East Asia shaking in their foundations, India is the only solid, solvent and stable democracy in Asia. But her choice to remain in the Commonwealth is likely to effect her international position as a Sovereign Independent State, preserving neutrality between the Russian and the Anglo-American blocs. Pandit Nehru's reply in the course of a Press conference on 11-5-49 confirmed the thesis that the Commonwealth would for all practical purposes sail with Anglo-American bloc and the alignment of the members of the Commonwealth on the side of opposing blocs would break the Commonwealth itself. Our capacity for statesmanship is put to public test as never before. The efforts to strengthen our country



to collaborate with the liberal minded countries everywhere are carefully watched and scrutinised. The special invitation to Nehru to address the General Assembly of the United Nations is significant. But international recognition cannot always be taken at its face value. President Truman's special interest in India synchronised with Nehru's invitation for Foreign Capital. As a prelude to his impending visit to U. S. A., Nehru is boosted as a World Leader. Curiously the appreciation and admiration for the qualities of head and heart of Nehru continue to emanate from unexpected quarters. It is hoped that India under the leadership of Nehru who is endowed with imagination, idealism and integrity would come out of every crisis and trial with her path undeflected, ideals unscratched and vision undimmed.

## Chapter XXXI

### THE KASHMIR DISPUTE

KASHMIR occupies a peculiarly strategic position since it touches the frontiers of Russia and China. With respect to area it is the biggest State in India. This play-ground of Asia is courted and coveted. As a holiday haunt there are few places on earth to outrival it. It combines the mountainous grandeur of Darjeeling, the canals of Venice, the snows and the lakes of the Alps, the panorama of the Riviera, the woodland scenery of the Lake Districts and the marvelous fertility of the Rhine Valley. It is impossible to describe adequately its superb beauty and the ever changing landscapes and views. But it has had a chequered history. In spite of its ancient glory it had to prostrate before many a conquerer. As was pointed out by Sir Francis Younghusband : "In spite of the splendid Moghuls, brute Pathans, bullying



Sikhs and rude Dogras, the Kashmiris ever remained the same. The conquerors came in hoardes, but they scarcely touched the soul of the people." After the defeat of the Sikhs by the British in 1846 the English got it ceded to them as War indemnity the whole of Kashmir and the English in turn sold away this beautiful spot and its people to the Dogra King of Jammu, Maharaja Gulab Singh, the grand father of the present Ruler for seventy five lakhs of rupees. These Dogra Rulers never entertained the Kashmiris including the Hindus in the State army. Even the Banihal pass connecting the valley of Kashmir with the Province of Jammu was constructed about three decades ago and that too practically remains closed during winter. Naturally there was continued ferment in the State and it crystalised into a definite stand for responsible government under the leadership of Sheik Abdullah.

Like Hyderabad, Kashmir too sat on the fence after 15-8-1947. At the outset the State of Chitral a feudatory of Kashmir acceded to Pakistan. Since Kashmir was geographically contiguous to Pakistan India did not make any overtures. Though the Province of Jammu

is physically contiguous to East Punjab there were no proper and convenient routes by land till the Pathankot Jammu road was constructed by the Indian Union at a heavy cost in July 1948. Hence Kashmir had to conclude a stand-still agreement with Pakistan. But Pakistan was anxious to see that it acceded to it at once. The communal killing in the Punjab resulted in migration of non-Muslim refugees into the State. Naturally there was some reaction, at any rate in the Province of Jammu where the Muslims were subjected to persecution. In the month of October armed tribesmen from the Frontier aided and abetted by the nationals of Pakistan began large scale raids into the State. Since the State authorities never took the sons of the soil into confidence the administrative machinery practically collapsed and the Maharajah himself came down to Jammu. Appeals to Pakistan to intercept the raiders did not elicit any helpful response.

At this juncture the Maharaja took Sheik Abdullah, the President of the National Conference, whom he persecuted for the last seventeen years and who was released only a little earlier, into confidence. They jointly approa-



ched the Union Government and proposed accession to India to save the happy valley from the onslaught of the raiders. As an earnest of his good intentions towards his subjects, the Maharajah appointed Sheik Alidullah as the Head of the administration. Government of India accepted accession subject to its ratification by the people of the State in a Plebiscite to be held under the guidance of the U. N. O. Pakistan described the accession as a fraud. What was more its initial opposition to deciding the issue by Plebiscite passed one's comprehension. Probably Pakistan wanted to forestall a decision by the force of arms.

Before the signatures on the instrument of accession dried up Indian armies were rushed to Kashmir by air to drive away the raiders. If India had not intervened and stopped the unprovoked aggression on Kashmir, it would not have stopped there but spread to other parts as well and there would have been no end to it. The raiders succeeded in consolidating their position in certain sectors like Gilgit, Ladak, Poonch, Mirpur and Muzafarabad. Besides they had their supply bases in Pakistan and modern weapons of War-fare were continu-

ously made available to them. Appeals to Pakistan to deny the raiders passage through their territory and to dissuade the Pakistan nationals from participating in the acts of aggression were ignored. Sir Md. Zafrullah Khan, Pakistan's Foreign Minister stated that his government could not prevent individuals from sympathising with the Muslims of Kashmir. Then the government of India would be justified in asking whether Pakistan had any control over the activities of its nationals. If the answer was in the negative Pakistan should welcome India's assistance to save it from internal collapse. Evidently, Pakistan while observing formal neutrality, in practice conducted itself in a most unfriendly and unneighbourly manner. The resistance was alleged to have been organised by the discontented and suffering Muslims of the State. The talk about partition of the State also gained currency in the British Press.

Under these circumstances India was compelled to raise this issue before the U. N. O., at the beginning of January 1948, under Article 35 of the Charter, as Kashmir became a part of India by virtue of accession. The Pakistan delegation tried to side-track the main issue



by drawing into discussion the issues of Junagadh, genocide and non-observance of certain agreements between India and Pakistan. The security council went beyond its scope by allowing the Pakistan delegation to raise other issues before the Kashmir issue was decided.

The Kashmir dispute dragged on before the U. N. O., for months. The several attempts to effect a settlement between the parties bore no fruit. At one time Britain and U. S. A. were inclined to support the Pakistan's view point and press for a neutral administration in Kashmir and withdrawal of raiders and the Indian troops pending plebiscite. The bold stand taken by the Indian delegation against this onesided solution had its effect. At a later stage the formula suggested by the Chinese delegate was acceptable to India.

But it was ultimately modified in such a way on 17-4-'48 that it became unacceptable to India and Pakistan alike. The provision in the new draft relating to internal composition of Kashmir Government, withdrawal of the Indian forces and the possibility of outside forces from Pakistan coming to Kashmir were strongly objected to by the Indian delegation. The proposal for appointment of a plebi-

cite administrator by the U. N. O. with wide powers basically ignored the fact that Kashmir acceded to India and that India had undertaken her defence. This position should continue till the plebiscite goes against India. India might be asked to give certain guarantees and provide certain safeguards. A five member Commission was appointed to visit Kashmir and carry out the terms of the resolution. In this matter the initiative in persuading the raiders to quit Kashmir was with Pakistan since the moral responsibility for the entry of raiders into Kashmir was practically fastened on her. At any rate India, the complainant and Pakistan the accused were virtually placed on the same footing.

When the United Nations Kashmir Commission arrived in India, Sheik Abdullah welcomed it to study the situation. The Commission was faced with a strange situation and saw the regular troops of Pakistan fighting on the Kashmir front. What was more the directive of the Commission to cease fighting had not been accepted by Pakistan. Its interim report dated 22-11-48 stated that "The situation which confronted the Commission upon its arrival was different from that which had



been envisaged by the Security Council during the deliberations which preceded the formation of its resolution in as much as regular Pakistan troops were within the frontiers of the State participating in the fighting." The report further noted that the Azad Kashmir Movement was assisted by the Pakistan High Command. All forces fighting on the Azad side were under the over-all command and the tactical direction of the Pakistan army as admitted by the Pakistan Government before the Commission.

In the light of these facts it was the duty of the U. N. Kashmir Commission to have remitted the case to the Security Council with the recommendation that Pakistan should be branded, the aggressor and made to pay all the penalties of aggression. The report curiously did not make a decision on plebiscite. As an excuse for omitting a solution of the pressing problem, the Commission expressed the pious hope that "Alternative solutions mutually agreeable to both parties should be considered." The public opinion in India resented such expressions of hope and advice when she was being treated on a par with the aggressor and when her complaint against

Pakistan was thus ignored or by-passed.

There was no easy walk over for either party. The slow progress of the Campaign was due to the difficult terrain, and adverse weather. The National Conference of the State decided to accede to India permanently. Besides Kashmir State declared Pakistan as an enemy territory. While there was an undeclared War between India and Kashmir, Sheik Abdulla cleverly let the cat out of the bag by taking initiative.

The Cease-Fire ordered by the Governments of India and Pakistan on 1-1-'49 brought about a sense of comradeship between the peoples of the two Dominions. The terms agreed to were:—

- I. Pakistan should withdraw their troops and also endeavour to secure the withdrawal of tribesmen and Pakistan nationals.
- II. India should withdraw the bulk of its forces in stages, but should maintain her troops in sufficient numbers to assist the local authorities for the maintenance of law and order.
- III. The position of Azad Kashmir forces was not clear. But it was presumed that since they claimed to belong to the State and



unless investigation proved the contrary, they would remain in the State and would not come under general withdrawal of Pakistan and other hostile forces.

IV. The territory evacuated by Pakistan troops would be administered by the local authorities under an official to be appointed by the Kashmir State. He will be a nominee of the U. N. Commission. He will have full freedom and receive the fullest assistance in the conduct of the plebiscite.

It is necessary to note that the Indian forces were sent there to prevent the future of the State being settled by the force of arms. The strength of the Regular Pakistan Army men, the tribesmen and the so-called Azad Kashmir forces regular and irregular opposing the Indian troops along 1000 mile Jammu and Kashmir front was estimated at 1,00,000. They control an area of 60,000 Square miles, i.e., nearly three fourths of the total area of the State, in the Northern part of the State. Besides Pakistan constructed a 325-mile long military road from Balakot in the North West Frontier Province to Skardu in Ladakh District. It was also reported that an Aerodrome was built at Skardu by Pakistan.

Naturally the Kashmir Campaign proved to be a costly affair. Indian Budget for 1948-49 disclosed increase in Defence expenditure by 35 1/3 Crores of Rupees mainly due to Kashmir operations. The total expenditure on these operations extending over an year or more could not be disclosed in public interest. According to Prof. K. T. Shah the expenditure under this item exceeded 100 Crores of Rupees.

At the instance of the Constituent Assembly of India, Maharaja of Kashmir nominated all the four representatives of the State on the advice of his Prime Minister. It would have been better if the decision were taken earlier. This belated act created an impression as though the representatives were brought in for purposes of placing their seal on the act of accession. It is not easy to reconcile the statement that the accession of the State is complete and unconditional with the earlier assurance of plebiscite over this issue. Pandit Nehru himself expressed the view that it was not an ideal course. For all these objections the only cogent reply is that plebiscite is to ratify accession not in the sense that act of ratification is necessary for the completion of accession but if the plebiscite produces a



verdict which is against accession to India, then India will not stand in the way of Kashmir separating itself. In this connection it is necessary to recall that under the provisions of the Indian Independence Act when a State acceded and subsequently wishes to get out of the act of accession that is to separate itself from the main Dominion it cannot do so except with the consent of that Dominion. Pakistan too in order to emphasise its interest and stake in Kashmir appointed a Minister of the Cabinet rank to be in charge of the Kashmir affairs.

After a period of deadlock extending over seven months on 26-7-1949 India and Pakistan reached mutual agreement on an approximate 800-mile long frontier running from Manavar in the South in Jammu to Keran in North, thence East to Marol and upto Shyok glaciers. This demarcation line involved certain readjustment of positions over a vast stretch of territory along the Kishenganga Valley. It would in no way prejudice the Truce line which may be drawn up at a later date. The object was obviously to stop the infiltrations and the raids which were going on since the fighting ceased. Subsequ-

ently the truce proposals of the U. N. Commission were abandoned on two issues firstly India's demand and Pakistan's refusal to include on the agenda the question of disbanding the Pro-Pakistan Azad forces in predominantly Muslim Kashmir and secondly a similar split on India's demand for discussion of transferring to India military control over the Northern area. Besides the conflicting assurances given to India and Pakistan hastened the breakdown.

Later on U. N. C. I. P., asked India and Pakistan to agree to the appointment of Admiral Nimitz as arbitrator to arbitrate the differences existing between them concerning all questions according to equity and his decision to be binding on them. It was also stated that the arbitration would be limited to the conclusion of truce. It is doubtful whether the same person can consciously discharge his duties as arbitrator without prejudice to his appointment at a subsequent stage as plebiscite administrator. It amounted to imposing a settlement. Can such a major decision be taken unilaterally? Impatience with the delay in resolving the deadlock cannot be a justification. Above all arbitration without even a reference to security council went beyond the terms of



reference as laid down by the security council's resolution appointing the Commission.

At this juncture President Truman and Prime Minister Attlee addressed personal letters to the Prime Ministers of India and Pakistan urging them to accept U.N. Commission's Proposals in the interests of World Peace. One would naturally expect those who tender advice to post themselves fully with the facts of the situation and the contentions of the parties. It would be for the United Nations as an organisation which is seized of the question to make a move and not for individual members thereof. It looked like an effort to bye-pass the United Nations. Though Pakistan readily accepted the Proposals, India consistent with her self respect and high stake in the matter rejected them. In the end the issue is referred back to the Security Council. Proposal for the trusteeship of the entire State or at any rate for the Kashmir Valley leaving India and Pakistan to administer the territories they hold for a period before plebiscite could be organised is in the air. The issue is still unsettled. The situation is like a Volcano covered with snow.

## Chapter XXXII

### MERGER AND INTEGRATION

SARDAR Patel had the vision to foresee forces which insisted on a speedy attainment of unity and uniformity of political practice throughout India. The States ministry under his guidance applied four different schemes in pursuing the programme of unification and merger each being applied according to size, geography and other factors relating to each State. The first is the merger of States in the adjoining Provinces. The second is the consolidation of certain States into centrally administered areas. Third is the Union of the States and fourth is to leave some States at any rate for the time being to continue their separate existence. The role of Mr. V. P. Menon, the Secretary of the States ministry and later its Adviser deserves to be mentioned. This wizard from Kerala, a place noted for its charms, redrew the map of India and literally



succeeded in equating princely India to the Provinces.

The time spirit was irresistible and the drama of history unrolled itself. In the words of Sir. C. P. Ramaswamy Iyer, "Sardar Patel rode the storm proving himself to be an astute Judge of human nature and the potentialities and the dispositions of the rulers as a class." Even after partition there were 566 States of all categories within the borders of India. Under this process 215 States with a population of 180 lakhs and covering an area of 1,06,960 square miles merged in the various Provinces. With respect to the representation of merged States in the Provincial Legislatures, Governor-General of India authorised the nomination of members to the various Provincial legislatures thus :— Madras-2, Bihar-1, C.P. and Berar-17, East Punjab-1, Orissa-31 and Bombay-61 to the Legislative Assembly and 10 to the Legislative Council. Besides Bombay added two Ministers to the Cabinet from the merged States. 27 States with a population of 40 lakhs and covering an area of 40500 square miles are Centrally administered necessitating the creation of seven chief commissioners provinces namely Cutch, Himachal Pradesh,

Bhopal, Bilaspur, Cooch-Bihar, Tripura and Manipur. 305 States with a population of 381 lakhs and covering an area of 2,37,260 square miles are integrated into six States Unions Viz., Patiala and East Punjab States Union, Rajasthan, Vindhya Pradesh, Madhya Bharat, Saurashtra and the United State of Travancore and Cochin. Lastly the sixteen Khasi Hill States merged in Assam. Leaving Kashmir and Hyderabad for the time being we find that even the only other State of Mysore has to make way sooner or later to facilitate the unification of Karnataka. The State of Sikkim also is now administered by a Dewan nominated by the Government of India.

Thanks to the willing consent and patriotic co-operation of the Rulers as well as the people of the States, the difficult task of merger and unification has been brought to a successful close within a short period of two years. The Rulers of the States, which had been formed into Unions retained their hereditary rights. The privy purse is fixed on a sliding scale. On the first lakh of the annual income of the State concerned it is 15%, between two to five lakhs it is 10%; and anything above 5 lakhs



7½%, subject to a top limit of ten lakhs of rupees. This limit has been exceeded only in case of certain major States that have been declared as viable Units. The amount fixed in excess of this figure is payable to the present Rulers alone. In the case of the next generation of the Rulers none of them would be entitled to draw a privy purse of more than 10 lakhs of rupees. The total amount of privy purse commitments so far entered into by the Government of India amount to 4,66,73,535 rupees per year. When amounts guaranteed to certain Rulers during their life time are subsequently refixed the total annual expenditure on this item will amount to little less than four crores of rupees. In defence of this colossal expenditure it is pointed out that the privy purse of the Rulers before integration and merger amounted to about 25 crores of rupees. What is more the privy purse amount is free from income-tax. Jurisdiction of Courts is barred with respect to treaties, covenants and agreements entered into between Rulers of the States and the Government of India. In addition to that the Princes are entitled to keep two palaces, jewels and private lands. The private properties of the Sourashtra

Union Maharajahs were estimated at 120 crores of rupees. Their palaces at Bombay alone were estimated at  $4\frac{1}{2}$  crores of rupees. But the most surprising fact is that when some of the States were merged into Provinces or formed into Unions the balance in their State treasuries was only few annas.

Some obvious defects are apparent in the various schemes of merger. Provinces were consulted for the absorption of the States, but the people of the States were not consulted. For all intents and purposes the people were transferred as a conquered race. In some quarters the mergers and integrations were styled as *coups D'etat* and not the fulfillment of people's mandate constitutionally expressed. Nomination of the representatives of the States merged in the the Provinces, to the respective Provincial Legislatures is the very antithesis of democracy. The Governments that came to be set up in most of the Unions are made up of men with no experience of leadership, no tradition of parliamentary government. They are often involved in local factions. They are loosely geared to the administrative machinery which is not efficient.

The relationship between the Centre and



the States Unions is governed by the covenants and the agreements entered into between the Centre and the Rajapramukhs. Owing to backward conditions of these States, the lack of a well defined constitutional relationship between them and the Centre and due to inadequate arrangements for administration, the Government of India found it necessary to exercise general control over the Government of the various Unions which according to the provisions inserted in the covenants are required to comply with instructions issued by the Government of India. Thus the control over the Union governments by the Centre is greater than over the Provincial governments.

Barring a few advanced States, the others are so backward that the task of raising the standard of administration presents formidable difficulties. Their financial systems developed in isolation. Many of them were dependent on Octroi and the internal customs duties as their mainstay. These sources of income are entirely out of place in an India politically integrated. States adversely effected financially are helped by the Centre to tide over the difficulties in a transitory period, which

may be ten or fifteen years. With the exception of Hyderabad and Kashmir all the States have signed agreements with the Government of India for fiscal integration with the Centre. They are placed on a par with the Provinces. It would take effect from April 1950. The Centre would give grants to these States for ten to fifteen years on a sliding scale. During this period the level of taxation would be brought up to the general level. Measures are being set afoot to remove other forms of feudalism from the States such as Jagirdar tenure, forced labour, etc. Steps have already been taken to integrate the armed forces maintained in the merged States with the Indian army. Indian State forces maintained in the Units which form parts of States Unions are at present under the responsibility of the Rajapramukhs of the Unions (except in Travancore—Cochin, where they are under Ministry) subject of course to the directions of the Government of India. There is also the agreement that they must be so organised and maintained that they will together with the armed forces of India fit into one over-all pattern for the defence of the country. What Dalhousie and Canning were able to do during



many years Sardar Patel achieved within two years. He proved to be the architect of the Indian Union and he could do all at once what Bismark did during his lifetime for the consolidation of Germany.

In this connection the question of the French and the Portugese possessions cannot be ignored. No Sovereign Independent State permits the perpetuation of foreign pockets within its borders. These anachronisms were tolerated as long as India was in bondage. Wisemen must learn from the experiences of others. Chandranagore already showed the way. In fact no referundum is necessary to vindicate the simple truism that blood is thicker than water. The promise of autonomy made by Pandit Nehru to these areas within the Union in order to preserve their particular features and heritage is more generous than just.

## Chapter XXXIII

### THE NATIONAL GOVERNMENT

No Government had been called upon to face within such a short time of assuming power from alien hands, problems of such diverse variety and stupendous magnitude as the government of India. But the Indian Union under the leadership of Pandit Nehru rose up to the occasion. To the strength of a giant and the courage of a lion, he adds the gentleness of a dove. He combines in himself the will of a conqueror, the devotion of a Hindu Sati and the labour of a Galley-slave. He is completely free from bitterness and is capable of withstanding any test with his head erect. In spite of the fact that the Congress party dominates the central government, it is reorganised in such a way as to make it national. Non-congress publicmen like Dr. B. R. Ambedkar, Mr. R. K. Shanmukham Chetty (resigned) and Dr. Syma Prasad Mookerjea who were severe critics of the



Congress policies in the past were taken into the Cabinet. Non-party experts like Dr. John Mattai, Mr. K. C. Neyogi and Mr. N. Gopalswamy Iyengar were also given positions of responsibility and trust. The appointment of Deputy ministers and Ministers of State following the practice in United Kingdom is an interesting experiment. But the fact that the abilities of outstanding elder statesmen and patriots like Rt. Hon'ble Dr. M. R. Jayakar, Sir. C. P. Ramaswamy Ayyar, Sir Mirza Ismail, Mr. V. D. Savarkar, Master Tara Singh and Mr. Sarat Chandra Bose are not pressed into service tends to render the national character of the government incomplete. These distinguished persons could have shed lustre on any position they might have been called upon to fill. It may be that they are incapable of playing the second fiddle always. It is an irony that they were excluded even from participation in the effort of constitution making. The present epoch seems to follow a peculiar way of shuffling human values.

Since the non-Muslims of Pakistan who were mostly Hindus migrated to India *en masse* and Sardar Patel referred to them as our nationals accross the border, Indian Union in the usual

course of things should have become a federation of the Hindu National States as Prof D. R. Gadgil pointed out. But such a deplorable course was checked by the bold stand of the Indian government. Except in East Punjab there was no large scale exodus of Muslims from India to Pakistan. Those that migrated from other parts of India to Pakistan at the outset were disillusioned and returned to India.

With the conversion of the Constituent Assembly into Dominion Parliament the National government began to function as a Cabinet. Serious food crisis, communal tension, plight of the refugees and labour unrest came to the fore. Delicate negotiations with Pakistan and the States had to be carried on at ministerial level. Sardar Patel the Deputy Prime Minister proved to be a man of quick decision and quicker action. He knows what to speak, when to speak and when to hold his tongue, when to hasten and when to be dilatory, when to be blunt and when to be ambiguous. He has the strength of conviction and the indomitable courage to act up to it with dogged tenacity and grim determination. He is rightly admired for his organising



ability, appreciated for his accomplishments and feared for his forceful methods. He creates an impression of calm strength, cold determination, conscious direction and concentration on a single objective. He is a good friend but a bad enemy. Thus he promotes an atmosphere which is not altogether conducive to the growth of democracy. He is virtually the steel frame on which the edifice of the National Government rests.

On the question of the payment of cash balance of fifty-five crores of rupees to Pakistan as its share pending the settlement of all outstanding disputes including the Kashmir affair Government of India took a bold stand and refused to effect payment. Of all the sanctions the economic sanctions are the most effective. In this connection it is important to bear in mind that the Government of Pakistan had already accepted the position that the Dominion of India continues the international personality of the Undivided India and that Pakistan is only a seceding State. On this basis Dominion of Pakistan was not in law entitled to any share in the assets of undivided India which lay outside its territorial limits. Such for instance was the position of the Baltic

States when they seceded from Russia after the first world war.

At this juncture, Mahatma Gandhi undertook a fast unto death to restore Hindu-Muslim harmony. Naturally the whole country was upset at the prospect of his impending death. Any price was considered proper to be paid to save him. Then the Government of India changed its decision and agreed to pay the amount to Pakistan. It is necessary to note that a Government has a personality and morality to safeguard and preserve. The desire to save the life of the Father of the Nation was certainly legitimate and laudable. But the institution of Government is not a theological laboratory to perform experiments on spiritual matters. Generosity to an adversary is a great virtue. But it must be mutual, spontaneous and free. Therefore while applauding the result, (the saving of the life of the Mahatma) one cannot but deplore the method. But the life of the Mahatma thus purchased could not be retained for long.

After the tragic assassination of Mahatma Gandhi the national government rose up to its responsibilities and put down lawlessness and unsocial elements with an iron hand.



Asserting its inherent paramountcy it took over the administration in the States of Alwar, Bharatpur and Kolhapur. Any hesitation or delay might have encouraged the reactionary forces that were waiting to capture power forcibly and function as a Fascist Junta. But the State funeral accompanied by the various wings of the armed forces accorded to this apostle of non-violence must have caused deep sorrow and deeper humiliation to his spirit.

Besides all departments of administration including the armed forces were completely Indianised. The appointment of Mr. C. Rajagopalachari as the Governor-General was significant. It ought to have been done even at the outset, when Pakistan refused to have a common governor-general along with India. The retention of Lord Mountbatten cost us a good deal in terms of political strategy. In spite of his personal charm, political tact, tenacity of purpose and wonderful skill he could not be a substitute to a national leader who led the Country through various vicissitudes. Mr. Rajagopalachari stoops to conquer. It was he, who skilfully pricked the bubble of Jinnah's bluff and bunkum. By accepting the

demand for Pakistan he forced the partition of the Punjab and Bengal and thus made best use of the bad bargain.

Above all Rajaji occupies a unique place in the estimation of the masses and classes alike. In brilliance and tact, in humility and gentleness, in patience and persuasive ability, there are few to equal and none to surpass him. He is the most clear-headed and clear-eyed public-man on the Indian political scene always seeing ahead with crystal clarity and anticipating coming events with an almost alarming accuracy. If the discretion of the country's affairs were left to the unfettered discretion of Rajaji during the last critical decade the fortunes of the nation would have been better and enviable.

But the system of Government has become top-heavy. Formerly the Government of India had six or seven departments. Now there are 19 Ministries with little co-ordination. It is difficult to deny that the administrative efficiency in India is at a low ebb. Several persons have been pushed up into positions for which they are not fit either by ability or experience. Bad administrators are more dangerous than bad laws. Besides during a tran-



sitory period the attitude of the civil servants becomes very important. The success of administration depends on their loyalty and ability. Too much reliance cannot be placed on the doctrine of the neutrality of services. They may think only of their personal interest and evince no enthusiasm for the work. This deprives Government of vigour, strength and quick action at the opportune moment. Public duties should be discharged in such a way as to attain civic excellence. Without civic morality communities perish and without personal morality their survival has no value.

Prof. M. Venkatarangayya rightly pointed out that a new administrative problem has arisen in consequence of the politicians failing to distinguish between their sphere of work and the sphere of the administrative services. There can be no dispute over the general proposition that elected members of the legislatures and ministers in cabinets have been showing a tendency to interfere with the legitimate duties of the civil servants with the result that in some parts of the country administration has broken down. The learned Professor adds that, "The civil servants have developed a psychology which makes them feel that they

need not take their tasks and responsibilities seriously as everything is dictated to them by the politicians. The latter have usurped so much power that the administrative officers are afraid of incurring their displeasure."

While complimenting the National government for what it has done in the various departments of administration and national life, one cannot but criticise it for its blank record with respect to the promotion of civil liberties. The British rulers had put on the statute book a large load of legislation making undue encroachments on the fundamental rights and civil liberties of the citizens of India and used that repressive legislation freely. Unfortunately the national government instead of repealing any of this legislation have added to it. After having seen the end of war and shaking of foreign domination our present rulers curiously allow the state of emergency to continue. Freedom has not in any manner enlarged the liberties of the people. The same old policy of repression often in a more intensified form continues to function with no change what ever. Emergency legislation, abuse of repressive measures, encroachment on the power of the judiciary and discrimination in



enforcement of laws as between individuals, institutions and parties have become matters of common experience. Even the much condemned Bengal Regulation of 1818 is pressed into service not infrequently. The haste with which the public safety measures were rushed through the various Provincial legislatures is wholly alien to the democratic procedure. A study of the *Habeas Corpus* petitions before the various High Courts in respect of detentions reveals many instances of abuse of power. The act of confiscating the passport of a non-partisan intellectual of international reputation like Dr. Mulkraj Anand does little justice to humanism and less than justice to democracy. Most of these measures are more punitive than preventive.

Does the situation in India tally with the situation envisaged by James Bryce in the following words: "In a free country people feel their supremacy and consciously treat their rulers as their agents while the rulers obey a power which they admit to have made and to be able to unmake them?" Montesquieu in his *Esprit Des Lois* says that, "Fear is an essential characteristic of despotism and cruelty its necessary consequence." Prof.

Harold J. Lasky writes that, "The outcome of persecution is to breed cruelty and arrogance in the persecutor and hypocrisy and servility in the persecuted." The story of development of revolutionary political thought from the earliest times makes it abundantly clear that the only effect of persecution and suppression is to render political doctrines more dangerous and the people more eager to learn them.

The history of all authoritarian regimes is a record of passage of power from individuals and groups to governments, which ultimately become inaccessible to the will of the people. Exaltation of the executive and the concentration of all power in it which are indeed vestiges of despotism have become perceptible. "Power", observed Lord Acton "tends to corrupt and absolute power corrupts absolutely." According to Dr. S. Radhakrishna, Power inclines us to assume omniscience and virtue. What is more it seeks to enlarge the boundaries of its authority. No State is safe in the hands of a few without intelligent co-operation and understanding from the average man and woman. Even virile sentiment and absolute obedience cannot replace respect for reason. Human nature tends to become unwilling or



reluctant to see the other side especially in revolutionary epochs when history moves with bewildering rapidity and persons wish to achieve results quickly. A despotism may be enlightened and benevolent. It may be for and of the people. But only a democracy is by the people. The tendency to confuse the Party Government with the State or the Nation is fraught with dangerous possibilities. It is not surprising that we hear so much criticism about lack of idealism and integrity even in high quarters.

Hence one will not be unjustified in saying that our present rulers do not feel assured that they command popular support for continuing in office or that the present state of our political evolution suggests and justifies the denial of constitutional methods of government and necessitates arbitrary rule. What is needed is a satisfactory answer to Abraham Lincoln's famous question, "Must a government of necessity be too strong for the liberties of its own people or too weak to maintain its own existence?". The conflict between the duties of the State in maintaining security and liberty envisaged by Pandit Nehru is understandable under extraordinary circumstances. Both

should be maintained and normally there can be no question of priority. But the more important question is that who is to judge? Evidently the established government. Hence formal democracy is powerless to defend liberty. Anticipating such eventualities the democratic political theory gave precedence to individual freedom. It may be that there are so many circumstances in the country which make it difficult to establish a genuine form of democracy and which encourage the growth of party tutelage. It is also argued that India is experiencing to-day the gnawing pains of a growing democracy. But even birth pangs, if continued for long may prove to be death throes. Urgency of immediate problems should not make us think of temporary solutions alone. While conceding the general proposition that any government that does not propose to abdicate has the inherent right to defend its safety and security, it has to be remembered that longer such a policy is pursued in isolation greater will be the unpopularity. Every government has to prevent criminal or destructive breaches of established order and in so far as it does so it is good and necessary. But when it tends to oppose any beneficial



innovation or wholesome initiative, it becomes a barrier against progress and promotes reaction. Therefore the necessity for order and security should not be permitted to weaken and demoralise the people. The presence of a popular and well organised opposition is imperative to justify the claims of a regime to be popular if not democratic. While the dividing line between accepted criticism and disloyalty is always thin, opposition to the party in power cannot constitutionally be construed as opposition to the State. According to strict constitutional theory those that were returned to power before the change of status are incompetent to continue and fresh elections ought to have been held.

It is interesting to recall that Pandit Nehru as the President of the Indian National Congress at Lucknow in 1935 said: "A Government that has to rely on Criminal law Amendment Act and similar laws that suppress the press and literature, that bans hundreds of organisations and that keeps people in prison without trial and that does so many other things that are happening in India to-day, is a government that has ceased to have even a shadow of justification for its existence." It is

a curious irony that these same measures should now be practiced under the leadership of the very same Nehru. His personal prestige and charm cannot indefinitely camouflage the realities. The scope to realise the lofty ideals that once inspired him seems to be restricted. It is an enigma that India with a Socialist Prime Minister and former President of the Civil Liberties Union tends to show signs of becoming a Police State.

It is said that institutions and individuals change more quickly than most of us think. Napoleon beginning his career as a revolutionary military leader became an Emperor. Ramsay MacDonald, Founder-Leader of the Labour Party in Britain formed the National Government dominated by the Conservatives in order to safeguard his political career. Stalin skilfully, systematically and ruthlessly eliminated Trotsky and a good number of other prominent leaders who were his colleagues during the revolution. Mussolini the left wing Socialist turned a Fascist. Kuomintang under the leadership of Chiang Kai-Shek, who daily swore by the last will and testament of Sun Yat Sen became a tool in the hands of the Soongs and disintegrated. Let it not be



written in the history of India that the wider interests of the nation were ever permitted to be ignored or go by default due to the indiscretion or short-sightedness of the Leaders. Every effort should be made to prevent leadership from degenerating into bossing. The centre of interest should not move from Service to Power.

Repression will merely drive opposition under-ground. At the crucial moment it will come up with redoubled vigour. Therefore opposition has to be fought with the methods of freedom. Intolerance of criticism is the thin edge of totalitarianism. Voltaire struck the correct note when he said, "I disagree with every word you say, but I will defend to the death your right to say it." At a time when Governments everywhere are making so many mistakes resulting in so much suffering, the call for a stoppage of criticism is harmful to the cause of democracy. Criticism is the Ozone of public life. But it must not do anything to undermine authority, overthrow law and order and bring about chaos. It is the inherent right and elementary duty of citizens under a democratic set-up. A good citizen criticises government when he thinks it needs

criticism. But only a good government can recognise that he is a good citizen. Nobody expects perfection of any government. One's relation to a Government is determined by the ratio between good and bad. "The Assyrian conqueror" observed Herbert Spencer, "who is depicted in bas-reliefs leading his captives by a cord is bound with that cord himself." "Liberty and good government," declared Lord Acton "do not exclude each other and there are excellent reasons why they should go together." It is hoped that the national government will, in spite of the difficulties inherent in the situation, soon see that the Civil liberties are restored and the government is run with the aid of ordinary penal laws.

The latest decision to press for the passage of the Hindu Code Bill and to make it an issue of confidence on which the government would stand or fall is uncalled for and unwise. The present Parliament has neither the popular support nor the moral authority to enact a measure of such far-reaching importance. It is a clear case of violation of constitutional propriety. The hurry about it passes one's comprehension. If it were left to be tackled by a future parliament elected on the basis of adult



franchise, not only the present generation but also posterity would thank the national government for its sagacity and statesmanship.

## Chapter XXXIV

### THE NEW CONSTITUTION

THE constitution of the Indian Republic is monumental in the sense that it is enormous. It is remarkable for its length. It consists of 395 Articles and eight schedules running to over 250 pages. While the constitution of U. S. A., is confined to 10 octavo pages, the federal constitution of Switzerland to 25 pages that of Canada to 38 pages, Ceylon to 30 pages and Republican Italy to 157 Articles, Union of South Africa to 123 Articles and Australia to 128 Articles, Indian Constitution runs to prodigious length. The Constituent Assembly laboured for three years to produce the same and it cost the tax-payer sixty four lakhs of rupees. But it suffered from want of quorum not infrequently. It is a sad commentary on the attitude of its members and the authorities that were responsible for their selection.

Since it is largely a lawyer made constitution (with the exception of Mr. T. T. Krishnamachari, the members of the drafting committee are either lawyers or persons with legal qualifications) very naturally they provided for anything and against everything that may turn up in the course of its working. The motto seems to be that safety lies in detailed legislation, the object of which is to make the constitution fool-proof. Thus it is extremely complicated and overburdened with meticulous details. It baffles the expert and frightens the layman. It contains many elements that in some other countries are to be found in the statutory rather than in the law of the constitution. It is highly complex and places a premium on forensic ingenuity and judicial subtlety. It is not surprising that it is described as a paradise for lawyers.

Though it is proclaimed that India is a secular state, the expression does not find a place in the constitution at all. The omission is probably due to the anti-religious flavour associated with the expression. But a secular state does not mean the dead, materialistic, self-seeking rule of the politician. It cannot also signify that laws should be dissociated



from ethical standards. It need not throw to winds the social life, the cultural heritage and the spiritual wealth of India. To give it a positive interpretation in favour of encouraging the exclusive secular and materialistic out-look on life is fraught with dangers. Dr. M. R. Jayakar observed that, "Over enthusiasm to make the State secular in everything is uncalled for when no one in this country wants to make the government theocratic." It should not mean that the vast majority have to submerge themselves just to please or appease a militant and fanatic minority. It has to be recognised that in a country predominantly peopled by followers of one religion and culture that people are bound to influence the way of life of society as a whole and the character of the institutions through which society functions. The function of a State cannot be to bring down all religions to uniform level. Thus the State is secular in the sense that it will officially neither recognise nor favour any particular religion. The whole notion of secular state is based on the simple truth that the individual is the centre of social organisation and not groups religious or otherwise, and that equal rights should be secured

to citizens through democratic devices.

India will also be known as Bharat. It is a necessary concession to the wide spread national sentiment. The adoption of Hindi with the Devanagari script is the natural consequence of partition. But the Homeric fight over the numerals made many rub their eyes in astonishment. English is placed under a sentence of death after fifteen years. In fairness to the Anglo-Indian community and as a memento of our long association with the British, it should have found a place in the schedule of languages. It remains to be seen that what the Commission to be appointed by the President at the end of five years to consider the language question would do. On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, such language also shall be officially recognised throughout the State or any part there of. Thus the linguistic minorities in a State are protected. The Preamble describes the country as a sovereign democratic republic and promises to secure to all its citizens; Justice, social, economic and



political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity of the Nation. It recalls the language of the famous French declaration of 1789. The constitution comes into force from 26-1-1950 i.e., exactly twenty years after the pledge for attaining the independence was taken by the people of India.

The constitution is largely inspired by the Government of India Act of 1935, which was not intended to establish a fully democratic State and one cannot overlook the fact that some of the institutions and conventions established thereunder were undemocratic or otherwise unsatisfactory in their operation and effect. Though it is federal in form it is unitary in content. In certain respects it is a sort of synthesis of American federalism and French centralism. The type of federation incorporated in the constitution is rather of the Canadian than of the American or the Australian type. It may with its British system of cabinet, turn out to be the weakest federation. Thus the background of the constitution is neither Indian

nor indigenous. Of course no one would suggest at this stage that the constitution should be original in the sense of being merely aboriginal. Whatever be the truth of the Shakespearian dictum, "Neither a borrower nor a lender be," every nation has all along been both a borrower and a lender. At the same time we are not a rootless people drawing fickle inspiration from transient fashions. We can wisely make full use of the experience of other countries. So long as borrowing is suitable to India's peculiar circumstances, there can be no objection at all. Since the constitution is literally a mosaic with materials drawn from every part of the World, the suspicion that it may land us in a foreign doctrinaire regime is not altogether baseless. While complimenting Dr. B. R. Ambedkar, the chairman of the drafting committee for successfully piloting this cumbersome measure with consummate ability, one cannot be blind to his innate disregard for whatever is Indian or indigenous. This strong-minded statesman equipped with erudition industry, analytical accumen, devastating logic and forensic skill successfully asserted himself at every stage with the result that the



constitution is overshadowed by his ideas and ideals.

Curiously there is no specific provision to the effect that sovereignty vests in the people. It was no doubt argued that the people were giving themselves a constitution through the members who were in the Constituent Assembly as the representatives. From this premises it is concluded that sovereignty is inherent in the constitution. But it is important to remember that there was no adult franchise when the constituent assembly came into existence. Hence it is all the more necessary to specify that sovereignty is derived from the people. Dr Ambedkar's explanation that sovereignty resides in government is not convincing. There is difference between a government and the people although they might be identical very often.

Citizenship is conferred on five categories of persons namely : (1) Persons born and domiciled in India ; (2) Persons domiciled and resident in India but who were not born in India ; (3) Persons who were or whose parents were born in India but residing outside India ; (4) Persons resident in India who had migrated to Pakistan and returned to India ; (5) Persons

resident in Pakistan who had migrated to India. Persons who had come to India were divided into two categories namely who had come before 19-7-1948 when permit system was introduced and those who came after that date. The former would automatically become citizens of India. The latter would be entitled to citizenship on the date of the commencement of the constitution provided a certain procedure is followed. Under this provision Muslims could return from Pakistan and acquire permanent citizenship rights. It is estimated that already three thousand Muslims returning from Pakistan secured such permanent permits to settle in India. Besides it is likely to create complications in regard to evacuee property in India especially in the absence of a corresponding facility provided by Pakistan Government for Hindus to return and settle down in Pakistan. To allay such an apprehension it is argued that migration by itself would not extinguish title to property which continues until a final settlement is reached between India and Pakistan and there is really no necessary connection between citizenship and property. Besides one who has been ordinarily resident in the territory of



India for not less than five years immediately preceeding the date of commencement of the constitution shall be a citizen of India provided he has not voluntarily acquired the citizenship of any foreign State.

The main criticism is that our citizenship is sought to be made the cheapest in the World. The provisions comprehensive as they are have not completely closed the loop-holes whereby undesirable persons could take advantage of the same. India is already short of space and the government is finding it difficult to solve the food problem. The refugees are not yet rehabilitated. Besides there is no provision for retaliation in respect of countries where equal rights of citizenship are not given to Indians. But it is necessary to bear in mind that the object of these provisions is not to lay down a permanent law of citizenship for the country. The Parliament has the plenary power to make any provision with respect to the acquisition and termination of citizenship.

The introduction of adult franchise on an unprecedented scale in a country where illiteracy is still a formidable problem is bound to complicate enormously the difficulties of conducting elections in a manner free from corru-

ption and fair to all parties. A noted French publicist once remarked that, "To rear up democracy on an ignorant electorate will mean anarchy to-day and dictatorship to-morrow." Hence an Election commission to supervise direct and control preparation of electoral rolls and conduct the elections to the various offices and legislatures is provided for. The terms, tenure and the status of the chief of this commission are similar to those of a Judge of the Supreme Court of India. The other members of the commission though appointed by the President could not be removed without the assent of the chief commissioner. Reservation of seats is abolished to all the minorities except to scheduled castes, tribes and some backward classes of Sikhs. Even for them reservation is granted for ten years only. The President may nominate not more than two members of the Anglo-Indian community if he is of opinion that the community is not adequately represented in the House of the People. This practice is also limited to ten years.

There shall be a public service commission for the Union and a public service commission for each State. Two or more States may agree to have a single Service Commission by



passing a resolution to that effect in their respective legislatures. Then the Parliament by law will provide a joint public service commission. On the request of the Governor, the Union commission can serve all or any of the needs of the State. The chairman and members of the Union and the Joint Service Commissions shall be appointed by the President and in the case of State service commission by the Governor. Nearly half the members of these bodies should be officials of ten years service on the date of their appointment. Their term of office is fixed at six years. The age of retirement for them in the States is 60 years and at the Centre is 65 years. The procedure followed for their removal is similar to that followed in the case of the removal of judges. After retirement the chairman of a State commission can be the chairman or member of the Union commission or chairman of a commission in some other State. The member of a State commission can be chairman of a State commission or chairman or member of the Union commission. A member of the Union commission can aspire to be the chairman of the commission or that of a State. But the Chairman of the Union

commission is ineligible for any other appointment after retirement. The public service commission need not be consulted in regard to the manner in which appointments and posts are to be reserved in favour of members of the scheduled castes or scheduled tribes or any backward class of citizens in the Union or a State.

Members of the Services originally appointed by the secretary of the state or secretary of state-in-council shall be entitled to enjoy all privileges in regard to salary, pension, leave etc. Even chosen representatives of the people are precluded from touching this new caste of administrators, since they secured a promise from the Congress Leaders on the eve of the transfer of power. Besides, the claims of the scheduled castes and tribes should be taken into consideration in making appointments to the services and posts in the Union and States. A special Officer will investigate all matters relating to the safeguards provided for them and report to the President periodically. This provision applies to the Anglo-Indian community as well.

For purposes of amendment of the Constitution the articles are divided into three cate-  
gories.



ries. Articles in the first category including grants or financial provisions, creation of new States or reconstruction of existing States, creation or dissolution of upper chambers in the Units, constitution of centrally administered areas and administration of scheduled areas and scheduled tribes may be amended by Parliament by a simple majority. In the second category are articles which may be amended by a majority of total membership of each house of Parliament and a majority of not less than two-thirds of the members of that house present and voting. In the third category are articles relating to the election of the President, executive power of the Union and States, Supreme Court, High Courts, distribution of legislative power and representation of States in Parliament, which will also require to be ratified by not less than one half of the units after complying with the procedure provided for the second category.

If the process of amendment is too rigid people would find ways other than constitutional to mend or end the constitution. It would be unfair to the posterity to put too many hurdles in the way of amending the constitution. Further nobody can dare say

that the constituent assembly convoked by a departing foreign power must be regarded as more representative of people or endowed with higher sovereign rights than any future parliament. Jefferson observed that, "If one generation could bind another the dead and not the living would rule." The proposition that the rigidity of a constitution secures its permanence and render the fundamental institutions of the State eternal and immutable is open to doubt. The spontaneous flights of constitutionalism ought not to be confined to the narrow limits of legalism. Following the Irish precedent it should have been provided for changes being freely made during the first decade after the commencement of the constitution.

The constitution does not contain any of the devices like referendum, initiative and recall of persons elected to office which are considered as essential if Government is to be strictly popular. They found a place in several of the constitutions framed in Europe after the first World War and among older States some if not all are found in Switzerland, U. S. A., and Australia. The obvious explanation for this omission is that though these devices make



a constitution more democratic, they have so many drawbacks and interfere so much with efficient and responsible government, that it is better to dispense with these and have only a modified and limited kind of democracy for a vast country like India. No constitution ever evoked enthusiasm soon after it was adopted. But people get accustomed to it and learn to love and respect it in course of time.

## Chapter XXXV

### FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

PRIDE of place is given to fundamental rights in the constitution. There are some who think that the permanent constitution of a State should not be hampered with the political or social ideals of a particular age. "A declaration of rights coming before the constitution of the Government", as pointed out by Mirabeau, "might prove but almanac of a day." The British constitution has none. In the U. S. A., most of the fundamental rights were brought into the constitution some years after the main constitution had been accepted.

These are of great importance in times of emergency, when there is the greatest temptation to infringe them.

At the same time it cannot be said that such a declaration *per se* prevents misrule, despotism or fascism. But it is certainly desirable to have such a declaration in the constitution of the country, since it would serve as a constant reminder to the judge, lawyer, administrator and citizen of the fundamental principles of law and of rational social organisation of which he may otherwise be ignorant or indifferent. The most difficult problem in the art of government is that of finding and holding the correct balance between liberty and order. The enjoyment of liberty depends on fundamental rights. Above all if liberty is to exist it must be founded on toleration; not the toleration which amounts to indifference, but an active toleration which not merely permits but encourages the expression of different opinions believing that only so can understanding of the truth be attained and preserved.

Under the constitution many of them can be suspended in times of emergency. In every constitution there is provision for suspension



of fundamental rights in times of grave emergency. The reason is that the interests of society must be protected even if it involves sacrifice of individual rights. If the limitations are too broadly defined the enunciation of the fundamental rights itself ceases as it ceased in the German constitution of the Third Reich to be of any practical value. On the otherhand if the limitations are defined too narrowly then the provisions of the fundamental rights tend to hold up, the social and economic progress of the nation as in U. S. A.

It is stated at the outset that there shall be no discrimination on grounds of religion, race caste or sex with regards to

- (a) access to shops, public restaurants and, places of public entertainment ;
- (b) the use of wells, tanks, roads and places of public resort ; there is also equality of opportunity in matters of public employment. But the Parliament can lay down a stipulation as to residential qualification for employment in the State. Besides there shall be no discrimination against any person after he was employed. Untouchability is abolished. No titles shall be conferred by the State

and no citizen shall accept any from a foreign state. But awards for military or academic distinctions are not affected. Citizens shall have the right:—

- (a) to freedom of speech and expression ;
- (b) to assemble peacefully and without arms ;
- (c) to form associations or unions ;
- (d) to move freely throughout the territory of India ;
- (e) to reside or settle in any part of the territory of India ;
- (f) to acquire hold and dispose of property ;
- (g) to practice any profession or carry on any occupation, trade or business.

It is felt that the right of property included in the above list gives wider and more secure rights to holders of private property than even to those in U. S. A., and is bound to stand in the way of execution of social welfare schemes that the future government might think of initiating.

All these rights are subject to a host of restraints and limitations. It is asserted that fundamental rights are limited to such an extent that they have almost become ineffective. But in U. S. A., where the funda-



mental rights were given in an absolute form the supreme court found it necessary to limit them and had held that these freedoms were not absolute that is to say, they were subject to various limitations and had evolved the doctrine of Police Power. Every bouquet of roses has its own thorns. Instead of allowing the supreme court to do so these rights are restricted in the constitution itself.

It is important to remember that individual rights are not absolute. For successful working of democracy a balance must be struck between individual liberty and social control. They are always subject to exigencies and requirements of ordered society. A constitution enumerating these rights has to make provision for their modification to suit the circumstances. All that legitimately and reasonably can be claimed is that such modification should be reduced to the minimum and should not be unreasonable. However it is felt that the rights should be subject to this constitution and the laws thereunder. It is not enough to state that the citizens have the rights but should give a positive guarantee. Too much prominence is given to exceptions to rights rather than to rights themselves. If the exceptions provided

for are strictly enforced the rights would become very elusive and the result would be contrary to the spirit of the constitution.

No person shall be prosecuted and punished for the same offence more than once. No one accused of any offence shall be compelled to be a witness against himself. Above all no person shall be detained without being informed of the grounds of his arrest as soon as may be possible. He shall also have the right to consult and be defended by a lawyer of his choice. He shall be produced before a magistrate within a period of twenty four hours and beyond this period he should not be detained without the authority of a magistrate unless he is an enemy alien or is arrested for preventive detention. Parliament may by law provide for preventive detention for a period longer than three months and prescribe the maximum period and the procedure to be followed by the advisory board. But the details about law and procedure governing detention could have been left to Parliament. It is felt that a specific provision on the lines of the New German constitution that detainees should not be subjected to physical and mental ill-treatment ought to have been incorporated.



Equality before law is assured. "But equality in the sense that any man can discharge any function irrespective of his qualifications or training" as Mr. T. R. Venkatrama Sastri pointed out, "is equality running wild." There are high and low functions. Each has its essential place in the scheme of life. While guaranteeing freedom of trade, commerce and intercourse throughout the territory of India, traffic in human beings, enforced labour and child labour are prohibited. But compulsory service for public purposes is authorised. Curiously there is no definition of public service in the compulsory clause. It is unfortunate that right to propagate religion is bracketed with freedom of conscience and free profession and practice of religion. There is freedom to establish, maintain and manage institutions for religious and charitable purposes and to own properties for the same. There is also freedom as to payment of taxes for promotion and maintenance of any particular religion or religious denomination. Freedom as to attendance at religious instruction or religious worship in educational institutions is rationalised. Cultural and educational rights are sufficiently protected and discrimination of

any kind is kept at a considerable distance. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid from State funds on grounds of religion, race, caste, language and the like.

Right to property is subject to compulsory acquisition for public purposes. With regard to compensation either the law fixes it or specifies the principles on which and the manner in which the compensation is to be determined and given. No such law made shall have effect unless it is reserved for the consideration of the President and his assent duly accorded. If any Bill pending before the Legislature of a State at the commencement of the constitution has after it has been passed by such legislature received the assent of the President it shall not be questioned in any court on the ground that it contravenes the above provisions. Besides these provisions shall not affect.

- (a) the provisions of any existing law ; Or
- (b) the provisions of any law which the State may make for the purpose of imposing or levying any tax or penalty for the promotion of public health or the



prevention of danger to life or property;  
Or

- (c) a law to be made in pursuance of any agreement arrived at with a foreign state or with respect to property declared by law to be evacuee property.

In addition to that any law of a State enacted not more than eighteen months before the commencement of the constitution, may within three months from such commencement be submitted by the Governor of a State to the President for his certification. If the President certifies accordingly it shall not be called in question on the ground that it contravenes the above provisions or sub-section (2) of Section 259 of the Government of India Act of 1935. Finally the right to move the supreme court by appropriate proceedings for the enforcement of these rights is the heart and soul of the constitution without which it becomes nullity. The legislatures are free to give this power to the lower courts.

It is felt that there is no right to bear arms since this demand found expression in the resolution passed at the Karachi session of the Congress. The denial would affect only the law abiding citizens who would not be able to

protect themselves against antisocial elements, who would always be able to get arms in spite of restrictions. It would also mean that a government which claimed to be a popular government did not trust the people. There is a cogent explanation for this denial. Circumstances when the Congress agitated for bearing arms no longer exist since India is free. In a civilised society nobody ought to be allowed to bear arms either for offence or defence and all force must be concentrated in State. It remains to be seen that how the fundamental rights will be enforced during normal and as well as abnormal times.

Directive principles of state policy indicate the importance of the principles that should dictate the State Policy. It is an idea taken from Spain, Via, Ire. But they are not enforceable by any court. They confer no legal rights or remedies. None the less they are fundamental in the governance of the country and it should be the duty of the state to apply these principles in making laws. Writers on constitutional law have differed as to the utility or expediency of embodying them in the constitution. The list of these principles is indeed impressive.



Certain laudable principles of State policy with respect to (1) securing adequate means of livelihood to all (2) ownership and control of the material resources of the community (3) decentralisation of wealth and production (4) equality in remuneration to both sexes (5) strength and health of workers (6) protection of the children against exploitation and abandonment are enunciated. Right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement is recognised. Provision for just and human conditions of work and maternity relief, living wage, uniform civil code, free primary education, promotion of education and economic interests of scheduled castes and other weaker sections find a place.

The State is also expected to raise the level of nutrition and the standard of living and to improve the public health. There is also an obligation on the part of the State to protect preserve and maintain the monuments, places and objects of national importance. But nothing is said about the family, save a vague mention of maternity benefits. The omission is deplorable. It goes against the conviction and tradition of the people of India. In this

connection one may profitably read Article 41 of the Eire's constitution. It reads: "The State recognises the family as the natural, primary and fundamental unit group of society and as a moral institution possessing inalienable rights antecedent and superior to all positive law. The state therefore guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State." Article 29 of the New constitution of Italy states that the Republic recognises the family based on marriage and on the equality of husband and wife. Further article 31 enjoins that the Republic must help large families.

Besides the State is required to take steps to separate Executive from the Judiciary, to promote prohibition, to prohibit slaughter of cows, to encourage cottage industries, for the organisation of village panchayats and empowering them with necessary powers and authority, to enable them to function as units of Self-government. Above all the State is expected to promote international peace and security.



## Chapter XXXVI

### UNION EXECUTIVE AND THE LEGISLATURE

THE executive power and command over the defence forces are vested in the President of India. He shall exercise his powers either directly or through officers subordinate to him. He shall be elected by an electoral college consisting of:—

- (a) Elected members of both Houses of Parliament;
- (b) Elected members of the Legislatures of States which mean the lower house in the States having a second chamber. Every elected member of the Legislature of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the Legislature. Each elected member of either House of Parliament shall have such

number of votes obtained by dividing the total number of votes assigned to the members of the Legislatures of the States by the total number of such members. In this connection fractions exceeding one-half are counted as one leaving out other fractions. The votes are so weighed to secure equality of voting strength as between the Central Legislature and the States Legislatures put together.

The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting shall be by secret ballot. It is felt that when one person alone is to be elected there is no need for this system. What is more he may have had a small proportion of first preferences. But election by a bare majority means that the majority party would be in a position to elect the President without the minority having any voice in the election. The term of the President is five years. He is eligible for re-election. The necessary qualifications are that he should be a citizen of India aged thirty five years and duly qualified for election as



a member of the House of the People. The age limit is superfluous as hardly anyone below that would command such a wide influence as to be elected as the President. In case some one does why should he be debarred? Pitt the younger became the Prime Minister at the age of 24 and he was quite successful. The president shall not be answerable to any court for the exercise and performance of the powers and duties of his office. It does not take away the right of a person to bring appropriate proceedings against the Government of India. He can be impeached for the violation of the constitution by two-thirds members of the total strength of the either House of Parliament. The fourteen days notice of such a resolution should also be passed by one fourth of the strength of the House. The Vice-President, will act as President during the casual vacancy or the absence of the President. He is elected by members of both Houses of Parliament at a joint meeting in accordance with the system of proportional representation. The qualifications and terms are similar to that of the President. Doubts and disputes relating to the election to these offices are enquired into

and decided finally by the supreme court. There shall be a council of ministers with Prime Minister at the head to aid and advise the President. They hold office during his pleasure and they are collectively responsible to the House of the People. The President has the power to make rules for the more convenient transaction of the business of the Government of India and for the allocation among ministers of the said business. Under a Republican parliamentary system, it is neither necessary nor desirable that the head of the State should act as an Umpire in the competition for cabinet membership. It is interesting to recall that in the Republics of Germany and Czechoslovakia after the first World War cabinet was given the legal status of Government and made the custodian of executive power in its own right. The British fiction that cabinet is merely a body of advisers was discarded. It is also necessary to bear in mind that though the power of the British Crown is restricted its influence is far greater; "The prestige of Royalty, the long term of office by the Sovereign and the influence of tradition combine to secure for the King in Britain a degree of consideration and confidence from the cabinet



and the Prime Minister which is rarely accorded to any other constitutional head", as Prof. Keith put it.

The President should not be the Government but merely the head of the state and the embodiment of national unity. Under the new constitution of Burma the President appoints the Prime Minister on the nomination of the Chamber of Deputies and appoints other ministers on the nomination of the Prime Minister. The danger that Parliamentary election of all members of the cabinet may weaken the leadership of the Prime Minister is thus avoided. It remains to be seen that what results will ensue when the President exercises his constitutional power to urge the Prime Minister to inculde in his Cabinet persons with whom he happens to be in political disagreement. The proposition of Mr. Alladi Krishnaswami Ayyar that if the President of the Union stood in the way of the council of ministers discharging their collective reaponsibility to the House of the People, he would be guilty of the violation of the constitution remains to be tested. It is admitted on all hands that there would always be marginal cases in which the President could not accept the advice of his mini-

stry. It would be better if special conventions regarding representation in the Cabinet such as those prevailing in Canada are permitted to be evolved by the interaction of political forces in due course.

The Attorney-General for India who advises the government is appointed by the President. He holds office during the pleasure of the President. He shall have the right of audience in all the Courts of India. The qualifications for such a person are the same as those that are necessary for one who aspires to become a judge of the supreme court. In the conduct of the business of the government it shall be the duty of the Prime Minister to communicate to the President :

- (a) The decisions of the council of ministers;
- (b) Such information relating to the administration as the President may call for;
- (c) If the President so requires to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

If the President is satisfied that a grave emergency exists whereby the security of India



or any part of its territory is threatened by War or internal disturbance he may proclaim the same. The proclamation may be revoked subsequently. It shall be placed before each House of Parliament and shall cease to operate at the expiration of two months unless it has been approved by a resolution of both Houses of Parliament. If such a proclamation is issued when the House of the people has been dissolved or its dissolution takes place during the period of two months and the same has not been approved by a resolution within two months it shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after reconstitution, unless before expiration of that period resolution approving the proclamation has been passed by both Houses of Parliament.

When a proclamation of emergency is in operation the President may by order declare that the right to move any court for the enforcement of such of the fundamental rights as may be mentioned in the order and all proceedings pending in any court for the enforcement of the same shall remain suspended for the period during which the proclamation is in force or for such shorter period as may be

specified in the order. Every such order shall be laid before each House of the Parliament as soon as possible. The President has also the right to proclaim a state of emergency to meet a financial crisis. It practically follows the National Recovery Act of U. S. A., passed in 1930, which gave power to the President to make provisions to remove both financial and economic difficulties that overtook America following the great depression. It is keenly felt that the President is invested with powers which cannot be consistent with democracy and responsible government. It is said that the British King reigns, the American President governs and the French President neither reigns nor governs but merely remains like a figure-head. Time alone will reveal whether the Indian President will reign or govern or will merely remain as a figurehead.

In this connection it is interesting to recall the following observation of the supreme court of U. S. A., while declaring National Industrial Act void: "Emergency does not create power, does not increase granted power or diminish the restrictions imposed upon power granted or reserved, though emergency conditions might afford a reason for an extraordinary use of exi-



ting power." Besides the British emergency powers Act of 1920, provides that the proclamation should be laid before Parliament within five days of issue and would cease to operate after expiration of seven days from the time it was so laid before Parliament, unless Parliament provided for its continuence. The Weimer Republic provided that the proclamation should be laid before the German Parliament immediately and should be revoked at the demand of the Parliament. Under the constitution of U. S. A., suspension of fundamental rights could be authorised only by the Congress and even then the Supreme Court can set it aside if it felt that conditions under which such suspension would be justified did not exist.

Evidently the exercise of such drastic powers must be subject to greater safeguards under democratic process than have been provided in the constitution. "These emergency provisions," observed Prof. K. T. Shaw "constitute the grand finale and crowning glory of the most reactionary chapter of the constitution". Mr. H. V. Kamath another member of the constituent assembly proclaimed with vigour and emotion that, "This arch of autocratic reaction surmounts,

the edifice of democracy". The soundness of a constitution must be judged with reference to the way that it is likely to operate under a difficult situation. It is hoped that these provisions will remain dormant and that there will be no occasion at all to press them into service and will soon fall into disuse.

The Union Parliament shall consist of the President and two Houses of Parliament called the Council and States and the House of the People. The Council of States shall consist of 250 members of whom fifteen well-versed in arts, letters and social sciences shall be nominated by the President and the rest shall be the representatives of the States. The representation of each State on the Council of States is calculated on the basis of one representative for every million of population for the first five millions and one additional representative for every additional two millions. The Council of States shall not be subject to dissolution but nearly  $\frac{1}{3}$  of the members shall retire on the expiration of every second year. The House of the People which is directly elected on the basis of adult franchise shall consist of not more than 500 representatives. There will be



one representative for every five lakhs of population. It continues for five years unless sooner dissolved. Its life can be extended by the President for one year at a time during emergency. In any case its life shall not be extended beyond 6 months after the Proclamation ceased to operate. The Parliament shall meet at least twice a year and the interval between the sessions shall be less than six months. The President can summon and prorogue the Houses of Parliament and also dissolve the House of the People. The President may address either House of Parliament or both jointly and also send messages with respect to pending Bills. The Vice-President of India shall be the ex-Officio Chairman of the Council of States. Some are inclined to think that it is unnecessary to have a Vice-President and deprive the upper house of the right to elect its own Chairman. But a Deputy Chairman shall be chosen by the said body. The Speaker and the Deputy Speaker of the House of the People shall be elected by its members. Normally they can vote, but should remain neutral when the house is divided equally.

One-tenth of the total number of members of the House shall be the quorum. Each House

of Parliament shall have a separate secretariat staff. The members have freedom of speech in the parliament and they will not be liable to any proceedings in respect of publication by or under the authority of either House of Parliament. Besides the privileges of members of Indian Parliament shall be the same as those of the members of the British House of Commons until the Indian Parliament itself takes up legislation regulating to privileges in whole or in part.

The Lower House will have complete control over finances of the country while in regard to other Legislative matters, a conflict between the two houses is left to decision by a simple majority of a Joint Session of the two Houses. The power vested in the President to send back to Parliament measures passed by both Houses is a relic of royalty and should be done away with.

The President can promulgate ordinances during recess of Parliament which shall be laid before both the Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament. The executive, the legislature and the judi-



ciary which are the main organs of the government should know their functions and limitations, if any constitution is to work successfully.

## Chapter XXXVII

### THE SUPREME COURT

THE proper function of democracy under any set-up more so in a federation depends on Rule of Law and that in its turn depends on the position, power and prestige accorded to the supreme judiciary in the constitutional structure and its relations with other organs of Government. It has to distinguish between individual liberty and social control. It has to maintain dignity and poise with courage and wisdom. The task of defining the orbits of government is indeed arduous. Prof. Frankfurter (now Justice Frankfurter of the supreme court of U. S. A.) observed : " Constitution is not a printed finality but a dynamic process. Its application to the actualities of the government is not a mechanical exercise but a high function of state-craft." The social, economic and political tendencies furnish the necessary back ground in interpretation. By every test the powers of the

Supreme Court of India are wider than those possessed by the supreme courts in other democracies. According to Prof. Laski the esteem in which the courts are held is the measure of well being in the community.

The evolution of any institution depends on the character and capacity of its personal. The supreme court shall consist of a Chief Justice and other Judges numbering not more than seven until parliament by law prescribes larger number. Besides judges of the High Courts with five years standing and Advocates with ten years practice, eminent Jurists also are eligible for appointment as Judges. The disparity between the terms of service of the judges of supreme court on one hand and of high courts on the other are likely to tempt the high court judges to resort to means inconsistent with their dignity and integrity in order to secure promotion to the supreme court. In England for example there is no such danger as the conditions of service of the judges of the high Court and as well as the Court of Appeal are identical and promotion from one to another carries no material advantage, but merely confers additional dignity and prestige.



The Judges are appointed by the President possibly on the advice of the ministry after consulting the Chief Justice of India and such other judges of the supreme court. It remains to be seen as to what will happen in case of disagreement. While conceding the theoretical right of the executive, sound conventions should be evolved to avoid any such clash. Independence is a state of mind that thrives on erudition, intellectual eminence and integrity. The majesty of law can be ensured (though not created) by investing the Judges with ample powers to interpret and if need be to lay down law. No positive guarantee can foster it in the absence of a high cultural level.

The age limit of 65 years for the retirement of judges is a step in the right direction. There is to-day striking paucity of persons with ability and experience. Even in U. S. A., Justice Holmes, the greatest judge continued to function till the age of 92. There is no age limit for retirement of judges in that country. Though the age limit for the retirement of judges in England is 70, we are used to see on the Privy Council patriarchs with long and flowing beards who seem to be insisting on

becoming centenarians. In spite of the severe climatic conditions in our country there are a good number of persons above 60 years with active and industrious habits. The provision relating to the attendance of retired judges follows the practice in United Kingdom and U. S. A. When there is no quorum of judges in the supreme court *Ad Hoc* Judges are appointed by the Chief Justice of India from among the judges of the high court after consulting with the Chief Justice of the State concerned. They shall have all the jurisdiction, powers and privileges and shall discharge the duties of a Judge of the Supreme Court.

While a judge may resign his office, he shall not be removed except by an order of the President passed after the address presented to him by each House of Parliament supported by a majority of total membership of the house and by a two thirds majority of the members present and voting. Retired judges cannot practice before any court or authority within the territory of India.

Rules prescribing a minimum period of service as a condition of eligibility for pension are unsatisfactory. A judge may find that if he retires prematurely by reason of his ill-health



he would receive small pension or no pension at all and he would have the incentive to cling to the office so long as he is not totally disabled. It is necessary that this incentive should be removed by providing that where a judge retires on grounds of health he will be eligible to full pension. Though it may sound unreasonable it is certainly in public interest. Extra expenditure to be incurred on this score would be small as there may not be many such cases. In this connection it is interesting to note that in U. S. A., pension of the judges of the supreme court is the same as their salary. In Britain the pension of a judge amounts to 70% of his salary. There is no reason to retain the stringent rules relating to the pensions of judges in our country.

The supreme court has original, appellate, revisional and as well as advisory jurisdiction. The original jurisdiction shall extend to any dispute.

- (a) between the Government of India and one or more States, or
- (b) between Government of India and any State or States on one side and one or more other States on the other, or
- (c) between two or more States.

An appeal shall lie to the supreme court from any judgment, decree or final order of a high court if the high court concerned certifies that the case involves a substantial question of law as to the interpretation of the constitution. Where the high court has refused to give such a certificate the supreme court if it is satisfied that the case involves a substantial question of law as to the interpretation of the constitution shall grant special leave to appeal. When such a certificate is given or such leave is granted any party in the case may appeal to the supreme court on the ground that any such question as aforesaid has been wrongly decided and with the leave of the supreme court on any other ground. An appeal shall also lie if the high court certifies,

- (a) That the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal is not less than 20,000 rupees or such other sum as may be specified in this behalf by Parliament, or
- (b) That the judgment, decree or final order involves directly or indirectly



some claim or question respecting property of a like amount or value, or,  
(c) That the case is a fit one for appeal to the supreme court.

While parliament would be unable to reduce the supreme court's position as a court of appeal it would have the power to reduce the number or nature of such appeals.

Besides the supreme court shall have the power to entertain and hear appeals from any judgement, final order or sentence in criminal proceedings of a high court in the territory of India, (a) If the high court on an appeal reverses the order of acquittal of the accused person and sentences him to death; (b) If the high court has withdrawn for trial to itself any case in a court subordinate to it and after the trial of the accused person and sentenced him to death; (c) If the high court certifies that the case is a fit one for appeal subject to rules made from time to time and to such conditions as the high court may establish or require. But unfortunately where a sentence of imprisonment say for grievous hurt by the trial court has been appealed against and the high court rules that it is a case of murder and gives a sentence of death, no appeal lies

to the supreme court. In spite of the fact that the supreme court has unfettered jurisdiction to grant special leave for appeal in any criminal case it is felt that where the question of life and personal liberties are involved the people should have the absolute right of appeal. The relevant question is sanctity of human life. It would have been better if it were provided that no person sentenced to death, be hanged unless his case was reviewed by the supreme tribunal in the country. Abolition of capital punishment would no doubt be a good remedy. Besides with a view to preserve discipline in Armed forces sentences and decrees passed by courts martial or military tribunals are excluded from the appellate jurisdiction of the supreme court. The supreme court can also review its own judgments. The Parliament can confer on the supreme court powers to issue various writs and other ancillary powers. The law declared by the supreme court shall be binding and be enforced throughout the territory of India with the aid of all authorities civil and judicial. Until Parliament otherwise provides, it shall also have jurisdiction and powers with respect to all matters in relation to which



jurisdiction and powers were exercisable by the Privy Council immediately before the commencement of this constitution under any existing law.

The rule-making power of the supreme court is subject to the approval of the President. Since the rules cover a variety of subjects the executive must have a voice. There may be some questions which are clearly the sole concern of the judiciary. In such cases the consent of the President should be formal. The broad distinction must be that while in those cases in which the court acts as an administrator there would be need to co-ordinate its powers and procedure with those of other authorities which might have close relevance, its judicial autonomy should be unqualified and complete. The Chief justice of India has the power to appoint the staff of the supreme court and fix their salaries subject to the approval of the President. The expenses of the supreme court are charged on the consolidated fund of India. But when the President proclaims a state of emergency to meet a financial crisis, their salaries and allowances are liable to be reduced.

It is not out of place to point out that

certain amount of bias is noticeable throughout the judicial history of independent countries against consultation by the executive. The exercise of advisory jurisdiction even in pursuance of provisions made in that behalf in modern statutes may often be attended with great inconvenience, occasion embarrassment and result in prejudice to the rights of the future litigants. The supreme court of U. S. A., has consistently refused to pronounce advisory opinions on abstract questions of law, on the ground that to do so would be incompatible with the position it occupies in the constitution of the country. "Advisory opinions" we are told "are ghosts that stay." "The whole notion of consultation," it is contended "is by hypothesis a contradiction which requires exceptional justification." Evidently the judge does not sit in the seat of justice in order to be consulted but in order to decide an issue. Exercise of advisory jurisdiction amounts to going into regions which are beyond Judicial purview and embarrass future litigant who later comes to court.

The question of employing the judges otherwise while still in service or after retirement is left open. In England a judge is



debarred by convention from promotion to non-judicial posts and from re-employment after retirement. In India the practice of re-employing the retired judges is on the increase. At one time most of the Native States hankered after the retired judges of the Provincial High Courts to man the State judiciaries. This practice is clearly opposed to democracy and good government. Under such a set-up his motives, interests and party loyalties consciously or unconsciously, openly or secretly would stand in the way of his acquiring and maintaining that balance of mind and detachment so very essential in a judge. Hence, it is imperative to include in the constitution an express provision disabling a judge from promotion to non-judicial office or from re-employment after retirement.

At the same time such a disability should be relaxed to serve overriding considerations of public interest on occasions. It should not prevent the temporary employment of a judge while in office to perform duties of a non-judicial character for which he is pre-eminently fitted by reason of his gifts, training and acumen. Even in England Lord Tomlin presided over the civil service commission and Lord

Macmillan over the Banking and Industry Committee with great distinction. There must be a provision to suspend this disability in times of grave emergency such as war. We come accross a good number of such precedents in England. A judge may be a great scientist like Lord Moulton. He may be specially qualified for diplomatic missions like Lord Reading, Lord Greene or Griffiths, the Chief Justice of Australia.

In our own country the services of Sir S. Varadachari as Chairman of the Central pay commission and the Income Tax Investigation Committee proved to be very valuable. The varied roles of Sir B. N. Rao is a matter of history. In the past too, a good number of Judges proved to be pioneers in different vocations. Thus Maha Govinda Ranede was a keen social refomer and a great economist, Sir Asutosh Mookerjee came to be known as an eminent educationist. Sir Shah Mohammad Suleman established high reputation as a Mathematician and a scientist. The examples are merely illustrative and not in any sense exhaustive.

Hence greater public interest lies in ensuring the utilisation of the wide and varied talents



of the judges during emergencies. "There is no better test of excellence of government than the efficiency of its judicial system." as Lord Bryce put it. It is hoped that the Supreme Court of India will bear favourable comparison in every respect with the Central Courts of Judicature in other Democracies.

## Chapter XXXVIII

### UNITS OF THE UNION

INDIAN Union consists of nine provinces to be called States, eight Indian States (to be more correct five States Unions, Hyderabad Kashmir and Mysore) eleven centrally administered areas and the Andaman and Nicobar Islands. Most of the centrally administered Units may be expected to disappear by integration with neighbouring States in due course. There is a school of thought which envisages that the adoption of the term State to denote a Unit of the Indian Union may lead to the assertion of sovereignty as was done by the States in U. S. A., and encourage the growth of fissiparous tendencies. But it is clear as crystal that the States in the Indian Union will not and cannot be sovereign in the

American sense. Even in U. S. A., that theory of the sovereignty of the States is practically exploded. Since the advent of the present century world conditions have compelled U. S. A., to transfer power from the states to the federal government progressively. While States should ordinarily be free to operate efficiently in fields deliberately and by general agreement allotted to them, they should not be placed in a position where political parties with occasional, perverse and temporary majorities may undo the work of national government or handicap its efficient functioning. A constitution devised for a country like India should uphold, sustain and further the cause of the fundamental unity. Thus the Indian Union though federal in form is unitary in content. It will not be farther from truth to say that it is the nearest approach to the Union of South Africa.

Parliament may admit into the Union and establish new States. Areas, boundaries and names of existing States can be altered by the Parliament. There is no equality between the various units of the Union. There shall be a Governor for each State. But the head of the



States Union or that of a viable state will be known as Rajapramukh instead of Governor. A Rajapramukh is the person for the time being recognised by the President as such. In the event of misbehaviour on the part of such persons, the President is entrusted with the power to withdraw his original recognition and recognise a suitable successor. Contrary to what is provided in case of a Governor the salary and the allowances of the Rajapramukh which have been determined by a covenant guaranteed by the central government may be fixed by the President. The government of every Indian State will be under the control of the Centre and it will have to comply with the directions of the Centre. The period of such supervision will be for ten years or more if the Parliament wants to extend the same. It is a safety valve and is not intended for progressive States like Mysore and Travancore-Cochin Union. Thus all the Units will be brought up to the same level in due course. But there is a separate provision governing the relationship between the State of Jammu and Kashmir and the Indian Union due to special conditions there. By virtue of this provision the State continues to be part of India and the Union legislature

will have jurisdiction to enact laws on matters specified either in the instrument of accession or by later additions with the concurrence of the State government. In the light of the decisions of the State's Constituent Assembly, the President will either abrogate this provision or direct that it shall apply with such modifications and exceptions as the constituent assembly may recommend.

The executive power of the States shall be vested in the Governor. The Governor is appointed by the President on the advice of the Prime Minister and of course in consultation with the Chief Minister of the State concerned. Election of a governor is not only expensive but also sets up a rival authority in the States. Election is suitable for an active governor, like that of an American State because there the electors can choose between rival policies. Nomination out of a panel elected by the Legislature is objectionable since it might lead to jockeying by groups. His term shall be for five years subject to the provisions that he shall hold office during the pleasure of the President and may submit his resignation to the President. He has also the power to promulgate ordinances during the recess of the



local legislature but only with the approval of the President. He shall not be answerable in a court of law for the exercise and performance of the powers and duties of his office. It shall not however take away the right of a person to bring appropriate proceedings against the Government of a State. He is eligible for a second term. He should be a citizen of India aged 35 years, qualified to be chosen as a member of the legislature of a State though not necessarily a resident of that particular State.

There shall be a council of ministers to aid and advice the Governor in the exercise of his functions. The chief minister shall be appointed by the governor and other ministers are appointed by the governor on the advice of the chief minister. A minister who for a period of six consecutive months is not a member of the Legislature of a State shall at the expiration of that period cease to be a minister. The Advocate-General of the State shall be one who is qualified to be a judge of the High Court and will continue in office during the pleasure of the Governor. When the Legislature of a state by law provides for the appointment of an Auditor-in-chief for the State, he may be appointed by the Governor.

The tribes advisory councils, proposed for each state where tribes are to be found, are to advise on such matters as are referred to them by the Governor or Rajapramukh. Governor is given power to define their boundaries. It is left to President to declare by order what are scheduled areas. All regulations made by the Governor or Rajapramukh shall be submitted forthwith to the President and until assented to by him shall have no effect. Annually or whenever required by the Government of India the Governor concerned shall make a report regarding the administration of the scheduled areas in the State. While admitting the special responsibility for hastening the pace of their development, it has to be recognised that it must inevitably be slow and more harm than good might result from forcing the pace. Dr. Verrier Elwin, who lived and worked among them pleaded that the integrity of their culture must not be lightly interfered with. An example of what might happen is to be found in the tragic experience of the African Negro who with little preparation plunged into the whirlpool of modern life and absorbed only its vices. The President will appoint a commission at the end



of ten years from the commencement of the constitution to report on the administration of the tribal areas and the welfare of the scheduled tribes.

The Legislative Assemblies of States shall continue for 5 years unless dissolved earlier. The members of the Legislative Assembly shall be directly elected on the basis of adult franchise. The representation of each territorial constituency shall be on the basis of population at the rate of not less than one member for every 75,000 persons. The total number of members of the Assembly of a State shall in no case be more than 500 or less than 60. There will be a second chamber (legislative council) in Madras, Bombay, U. P., Bihar, Bengal and Punjab. The Legislative Council of a State shall not be subject to dissolution, but  $\frac{1}{3}$  of its members shall retire every second year. The total number of members of the upper chamber in a State shall not exceed 25% of the total number of members in the Assembly of the State and the membership of the Council shall in no case be less than 40. Until Parliament by law or otherwise provides, the composition of the upper chamber of a State shall be as nearly as may

be, as follows :- (a)  $\frac{1}{3}$  shall be elected by members of Municipalities, District Boards and other Local authorities (b)  $\frac{1}{12}$  shall be elected by electorates consisting of persons residing in a State and had graduated or obtained qualifications recognised by law as equivalent to that, three years previously from any University situated in the territories of India. (c)  $\frac{1}{12}$  shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in institutions not lower than a secondary school (d)  $\frac{1}{3}$  shall be elected by members of Legislative Assembly of the State from amongst members of the Assembly and the remainder shall be nominated by the governor. Such nominees should be persons well versed and experienced in literature science, art, co-operative movement and social sciences. The quorum shall be one tenth of the total number of members or ten members which ever is great.

While a proclamation of emergency is in operation the five year term of Assembly may be extended by Parliament for a period not exceeding one year at a time and not exceeding in any case beyond a period of six months after the proclamation has ceased to



operate. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he (a) is a citizen of India (b) aged 25 years for the Assembly and 30 years for the Council (3) possesses such other qualifications as may be prescribed. No person shall be a member of the Legislature of two or more States at a time. If any question arises as to whether a member of a House of the Legislature of a State had become subject to any disqualifications, the question should be referred to the Governor and his decision shall be final. Before giving any such decision the governor should obtain the opinion of the Election Commission. The lower house has the full control over the State treasury. But in the case of other legislative measures there is no provision for a joint session to resolve a conflict as is provided in the case of the central legislature. If in the consideration of a Bill, the lower house persists in rejecting the recommendations of the upper house then it can certainly have its way and the Bill will become law on receipt of assent by the governor. The State Legislature shall be summoned to meet at least twice in an year. The Governor may address and

send messages to the legislature. At the commencement of every session he shall address the assembly, or in the case of a state having an upper house, their joint session. Matters referred to in the address shall have precedence over the business for purposes of discussion. The State Assembly shall elect two members as Speaker and Deputy Speaker of the House respectively. Their powers and functions are similar to those exercised by the Speaker and the Deputy Speaker at the Centre. While a motion of no confidence against them or for their removal is under consideration they shall not preside.

There is also a provision for the abolition of the second chamber in those provinces which start with a second chamber at the commencement of the constitution and also for the creation of a second chamber in the provinces where there was no second chamber at the commencement of the constitution. As regards the procedure, the matter is left to the lower chamber which by a resolution could recommend. Such a resolution should be passed by a majority of the total membership of the Assembly of not less than two thirds present and voting. In order to facilitate a quick



change being made, provision is made that such law is not to be deemed as an amendment of the constitution.

The high courts of all the States are put on the same footing. The judges of the high court are appointed by the President in consultation with the Chief Justice of India, the Governor of the State and in the case of the appointment of a judge other than the chief justice, the Chief Justice of the State. The President can transfer a judge of a high court from one high court to another. Power is reserved to parliament to determine by law compensation and allowance to be paid in case they are so transferred. In the meantime President can fix by order the quantum of such allowance. They shall hold office until they attain the age of 60 years. The procedure for their removal is similar to that of the judges of the supreme court. No person who held office as a judge of a high court after the commencement of the constitution shall plead or act before any court or authority within India. It is incumbent on the Chief justice of a High Court to take the consent of the President before calling upon a retired judge to sit on the Bench. Every high court shall have superinten-

dence over all courts throughout the territories in relation to which it exercises jurisdiction. But sentences and decrees passed by courts martial or military tribunals are excluded from the appellate jurisdiction of a high court. If it is satisfied that a case pending in a subordinate court involves a substantial question of law as to the interpretation of the constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may dispose of the case itself or determine the said question of law and remit it to the original court for disposal, accordingly. Parliament may by law extend or exclude the jurisdiction of a High Court from any State other than or any area not within the State in which the high court has the principal seat. Before such a Bill is introduced the consent of such other State should be obtained. When the jurisdiction is to be extended the consent of the State in which the high court has its principal seat should also be obtained. There are also restrictions on the power of the Legislatures of States to make laws with respect to jurisdiction of a High Court in a State having jurisdiction outside that State. While providing for



high courts in centrally administered areas it is stated that if it is not possible to allot a high court exclusively, Parliament may declare a certain other high court situated in an adjacent area as a high court for that particular area. District Judges are appointed by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. A person not already in the service of the Union or the State shall be eligible to be appointed as a District Judge if he has seven years standing as an Advocate at the Bar. Other appointments in the subordinate judiciary are made by the Governor after consultation with the State Public Service Commission and with the High Court. The control over the subordinate judiciary is vested in the High Court. No discussion shall take place in the Legislature of a State with respect to the conduct of any judge of the supreme court or high court in the discharge of his duties. Courts also cannot enquire into the proceedings of the Legislature.

The President issues a proclamation of emergency on receipt of a report from the Governor or Rajapramukh of a State or other-

wise if he is satisfied that the Government of the State could not be carried on in accordance with the provisions of the constitution. By that proclamation the President can assume to himself all functions of the Government of the State including the powers of the governor and the Legislature. He can also suspend any provision of the constitution relating to any body or authority in the State. He cannot however assume any of the powers vested in the high court. The President may revoke or vary the proclamation. It will cease to operate unless approved within two months by the Parliament. When approved thus it will be in force for six months. It can be revived and extended for a further period of another six months. In no case it could be in force for more than three years. Then Parliament might delegate the power to make laws for the State to the President or any other authority specified by him in that behalf. The President might authorise when the House of the People was not in session expenditure from the consolidated fund of the state, pending sanction of such expenditure by Parliament. Besides the President might promulgate ordinances for the State except



when both Houses of Parliament were in session. While a proclamation of emergency is in operation nothing in the fundamental rights shall restrict the power of the State to make any law or take any executive action which the State would otherwise be competent to make or to take. Another provision is added which authorises the President to declare that the Government of a State could not be carried on under the provisions of the constitution, when the executive of that State fails to carry out the directions given by the Union executive under powers conferred by the constitution. Thus the autonomy of the States is limited, restricted and regulated.

## Chapter XXXIX

### THE INTERRELATIONSHIP

WITH regard to the distribution of powers, Centre is strengthened at every step. Strong centre is practically equated to a centralised system. The tendency to strengthen the Centre has to be considered in the light of our history. Under the Mauryas, Guptas and the Moghuls India's weal and welfare was due to a strong national centre. But a sincere attempt

at effecting a just and stable equilibrium between the opposing forces of centralisation and decentralisation should have been made. Correspondingly the Units are deprived of the autonomy which is legitimately claimed as their due. The Union list consisting of 97 subjects is wider and exhaustive. The State list running to 66 items is narrower and limited. The concurrent list with the 47 items is comprehensive enough. The residuary powers are vested in the Centre. The lengthy enumeration and differentiation of all these items are expected to avoid voluminous litigation from which the U. S. A., and other Federal States have suffered. Time alone will tell whether the draftsmen has successfully overcome the consequences of lawyers' ingenuity.

Parliament may make laws for the whole or any part of India and the Legislature of a State may make laws for the whole or any part of a State. Laws of the Union shall not be void on the ground of extra-territorial operation. The Union has the power to provide for the establishment of certain additional courts for the better administration of the laws already made or to be made by the Parliament. The Union parliament can trench upon the State



list if the Council of States by a  $2/3$  majority adopts a resolution to the effect that a subject in the State list has become a question of national importance. Such a resolution shall remain in force for a year but may be extended. The law passed in pursuance of the same would lapse, six months after the resolution has ceased to be in force. It may also do so when a proclamation of emergency is in force. Further, a State legislature may resolve to empower the Union parliament on any matter. Besides the Union is empowered to make laws, to give effect to any treaty, agreement or convention. In the event of inconsistency between laws made by Parliament and laws made by the Legislatures of States the former shall prevail.

Freedom of inter-state commerce and trade is subject to the limitations which might be placed by Parliament or by various States. Those limitations would only arise out of scarcity of goods and of national or public interest. The action of the States in invading on the freedom in public interest is also made subject to the condition that any Bill affecting the freedom of trade and commerce should have the previous sanction of the President.

Provision is made to enable Parliament to establish a central trade and commerce authority similar to one in U. S. A. But the States are empowered to impose restrictions on trade and commerce by levy of certain taxes on the import into or the export of goods from such States in accordance with the previous practice by virtue of an agreement in that behalf entered into between the Government of India and the Government of the State for such period not exceeding ten years from the commencement of the constitution. The Union has also control over the States in respect of protection of Railways. Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of waters of or in any Inter-State river or river-valley and exclude the same from the jurisdiction of the Supreme Court or any other court. The property of the Union shall be exempt from all taxes imposed by a State or any authority within a State. But it does not take away anything by way of financial resources now possessed by the local authority until parliament otherwise provides. Similarly the property or income from a State shall be exempt from the Union taxation without prejudice to



the plenary powers of the Union to impose taxes. Besides there shall be no tax on the sale of electricity to the Centre. Prior sanction of the President is necessary to Bills affecting taxation in which States are interested. Union government might under law make loans to any State or give guarantee in respect of loans raised by any State. Succession and Estate duties in respect of properties other than agricultural land terminal taxes, taxes on Railway freights and fares shall be levied and collected by the Union Government, but shall be assigned to the State. The problem of financial relations between the Union centre and the federating Units has offered difficulty in all the federal constitutions. Every where the chief concern has been to safeguard the financial stability of the centre without depriving the federating units of adequate finances. The president within two years from the commencement of the constitution and that after at the expiration or every fifth year or earlier constitute a Finance Commission which would consist of a chairman and four members. It will perform the fourfold task of making recommendations with regard to (a) the distribution of taxes between the Union and the

States, determination of the net amount to be distributed and the share of each State (b) the principles which should govern the grants-in-aid to the States out of the Indian revenues, (c) the continuence or modification of the terms of any agreement entered into by the Union with the Provinces and States in respect of federal taxes, (d) any other matter referred to the Commission by the President in the interests of sound finance.

From 31—3—1951, no State can impose a sales tax on the sale or purchase of goods which takes place outside the State or in the course of import into or export from India. Nor can a State impose sales tax on any goods if the sale takes place in the course of inter-State trade or commerce. No state can impose sales tax on goods declared by parliament to be essential for the life of the community unless the State obtained assent from the President. In regard to the administration of Union subjects the Centre could have its own agency. In regard to the concurrent subjects it could utilise the agency of the States. But when the Centre is not satisfied with the agency of the States it could replace the same with its own agency in regard to these subjects also.



The effect of proclamation of emergency by the President on the States is that:-

- (a) the Executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;
- (b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers or imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the constitution.

Arrangements for transition ensure the continuence of the Legislature, Government and administrative machinery. There is no time limit for the duration of the Provisional Assemblies and Parliament. If they tend to forget their provisional character and attempt to perpetuate themselves it would be a disaster.

Undue delay in implimenting the provisions of the new constitution would lead to chaos. It remains to be seen whether the resolution of the Constituent Assembly urging the holding of elections in 1950 would be a pious wish or a mandate. Double membership of the Constituent Assembly or a Provincial or State Assembly on the commencement of the New Constitution is abolished. The President is authorised to adapt or modify any existing law which may be inconsistent with the constitution. Provision is also made for automatic transfer of undisposed of cases from the Privy Council to the Supreme Court. After 26-1-1950 Privy Council is permitted to dispose of the pending appeals. It cannot however entertain fresh appeals. Smooth working of a constitution is dependent on the relationship between the various Units that constitute the Government.

The unanimous election of Dr. Rejendra Prasad as the first President of the Indian Republic is well-received. He evokes admiration and esteem among the people to a degree beyond comparision. He is purely Gandhian in outlook and conduct. As a distinguished Kayastha he combines in himself



Hindu Dharma and Islamic culture. He is scrupulously loyal to the heritage of India marked by a rare integrity of purpose. He is an intellectual without airs, a scholar without show and a leader without an enemy. He is goodness and greatness personified. He has instinctive certitude in great crisis. His supremacy has something the authority of a natural element. It can be truly said of him that, "No statesman ever came into greater distinction with less pushfulness and self-advertisement or with a more deliberate avoidance of the arts of the demagogue." Meticulous sense of honour governs all his actions. He conducts himself with regal dignity and utter simplicity. This hero of Champaran, the land of King Janaka, is the nearest approach to *Sthitha-pragya* (Perfect saint) according to Bhagawad Gita. He also enjoys the reputation of being an *Ajatasatru* (one who has no enemies). Thus he is eminently fit to be the constitutional head of Bharat.

## Chapter XL

### FUTURE OF CONSTITUTIONALISM

ONE encouraging development after the Second World War is the expansion and growth of constitutionalism. New constitutions have been adopted in France, Italy, Japan, Brazil, Venezuela, Burma, Indo-China, the three states of Germany and lastly India. It is said that State is the expression of law and law is the expression of moral order. In the development of constitutions, law and institutions, dignity and independence of the individual are important landmarks. Forms of constitution are related to stages of development. It is not a mere instrument of executive action or a weapon to achieve the policy of the State. In some cases while law is liberal, life may be reactionary. There is no constitutional alchemy by which we can get golden conduct out of leaden instincts. If the constitution



makers move further than human nature people may refuse to conform to their vision.

The factors that foster and promote constitutionalism are an instructed and enlightened public opinion, responsible opposition, freedom of expression and association, high standard of integrity and purity in public life. Belief in the efficacy of literacy and education as a guarantee for the continuence of constitutionalism has to be revised in view of the experience of Germany under the Nazis and Russia under the Communists. Constitution is only a skeleton. The soul and life in it is put by the people who form and work the government. There are examples in history where Governments based on most liberal and democratic constitutions became mere engines of oppression and tyranny, for a particular man or group of men who happened to control the governmental machinery were reactionaries. The fate of the first and the second French republics as also the Weimar republic of Germany is well known. Thus the action and interaction of institutions and men, their education, culture, outlook and character determine the measure of success of democracy. Ultimately its success depends on the calibre, integrity and cultural level of the

common man. The institutional checks and balances however perfectly devised have a restricted scope. Hence the worth of most constitutions is relative. To deserve freedom and to preserve it, people at large have to turn over a new leaf and exchange utopian dreams for the hard lessons of history through sober exertion rather than through slogans. A successful constitution is not a mere text-book on national life but a testament of it revealing much wisdom and more sympathy. The real issue is what suits a particular country at a particular time. It is said to outlive its utility when it protects the State and the rulers than the citizens. The best government is described as that which governs us least and which teaches us to govern ourselves.

It is said that democracy is government of the people, by the people and for the people. But the democratic sense is easily satisfied when elections are held. Afterwards the persons elected do not take vital and continuous interest. Thus "Democracy" in the words of Dr. Pattabhi Sitaramayya "is a direction and not a destination, is an attitude rather than attainment. It is ever on the move and never reaches a destination. It has



only a beginning and knows no end. It is a way of life and not a system of activity. Precedents are milestones on the path of progress." "Parliamentary rule," as Prince Kropotkin pointed out "is pre-eminently a middle class rule." Peace and contentment are intertwined. Ideologies based on the cult of force and on the might of the mailed fist are the very antithesis of democracy. Democracy to be real and living must be an economic fact and a social reality. Equality of opportunity for all not only as a principle but as a reality is the very basis of the democratic way. This is an age of upheavals and gigantic changes. We are obliged to live from one breathless moment of peace to another. It is not safe to sit on a powder magazine and smoke a pipe of peace. Freedom in all its aspects is in constant peril. Eternal vigilance is the proverbial price of liberty. There will always be evils to be resisted, injustices of which we cannot be tolerant and issues on which we have to take sides.

The prospects of a revolution have to be examined in their proper perspective. Revolution is after all a revaluation of our ideas and ideals, ways and means in the context

of changed conditions. Things happen in mind long before they are revealed in history. Struggle of ideas ignores national boundaries and even national loyalties. Slow evolution is the root-cause of all revolutions. A nation gets into a revolution when those that are placed in seats of power lack the wisdom and the vision to forestall and solve the pressing problems with coolness, consideration and commonsense. Revolution constitutes a repudiation of the past. Irrespective of its cost to-day it rushes on to tomorrow. It marks a new beginning. But revolutions, not infrequently, devour their own children. However, revolution implies the assertion of fresher and stronger forces. Human history is full of such assertions. Humanity needs periodical shaking and stock-taking. In order to secure a dignified place in history it should be bloodless and peaceful. Wisdom lies in curing the causes of revolution and constitutionally directing the pent up forces through proper channel.

When there are millions of peoples, who do not know what a square meal is, who do not get sufficient clothing to cover their shame and when they consider dirt and vermin as their natural surroundings, democracy and constitu-



tionalism will have no healthy appeal. There can be no security and future for an order which enables a handful to be happy and leaves the rest to break their backs with the burdens they bear. Economic equality and social justice are the very basis of a stable and enduring society. In the absence of these prerequisites the talk about political stability is mere moonshine. Drifting invariably leads to chaos. It is hunger and unemployment that compel people to adopt unconstitutional ways. The slogan "Give us bread or else, we will grow Red", tends to gather adherents. Even though one is not a revolutionary by temperament and training he may become so by necessity. Upheavals on the frontiers will quicken the process. Thus "Communism appeals to the backward people who are weak, illiterate, depressed and poverty stricken", as Dr. S. Radhakrishna put it. It calls upon them to adopt drastic and ruthless ways to bring about social justice and economic equality. Democracy multiplies votes but it does not fill stomachs. The flood of Communism has already swept the most thickly populated areas where the living standards are the lowest.

Though the ideals of Communism are laudable and desirable, the ways and means

adopted to achieve the same are not wholesome. The habit of looking upon Russia as the Fatherland and Red Star as the guide is incompatible with national dignity and self-respect. Regimented life and thought are the very reverse of democracy. Dogmas strangely out of touch with the realities of the situation, aloof and remote from actual life, anti-social in character and operation lead to perdition. The slogan, *Right or wrong my country* is a reliable guide upto a point. But the slogan, *Right or wrong my party* is both mischevous and misleading. Freedom will be worth nothing if life and property are in perpetural danger and if citizens are not able to go about without fear. Violence begets violence. Bomb can never be a substitute for the ballot box. Threatening the opponents with dire consequences is not the language of democracy. On the other hand it resembles the language of the barracks. It is necessary to distinguish, civil liberty from criminal licence. Absolute freedom to preach a particular doctrine and persuade people peacefully to go to that side is civil liberty. But if it is done at the point of pistol then it becomes criminal licence. There can be no ample compensation for loss of



freedom and human dignity. Taking advantage of the situation the vested interests try to capture power in the name of nationalism and democracy. But after getting power they manouvre to consolidate their position and perpetuate their hegemony. At such a juncture thinking public may be inclined to share the belief of Prof. Harold J. Laski that, "People who want to destroy the extreme left are more threat to democracy than the extreme left itself." The chasms and the pitfalls that cover the long and lone highway of democracy can be successfully negotiated by sticking to constitutionalism.

Contented, strong and incorruptible middle class with leisure and facilities to keep itself in touch with national and world problems and shaping public opinion on healthy lines may be able to save the situation, if it is given a fair chance. Unfortunately it is sandwiched between the unimaginative and selfish rich and the poor who are restless and asserting. A class which has brought freedom to India, which has been the store house of its enterprize stability and culture is on the verge of collapse. In fact the survival of honest and hard-working middle class has become problematic.

Progressive deterioration is apparent. The grim logic of facts seems now to be forcing them to seek support in quarters which, in the past they would never have considered. The crisis is brewing and the prospects are quite grim and gloomy. The total extinction of this class seems to be a matter of time. Naturally they tend to swell the ranks of the poor and provide them with leadership. If the Powers that be content themselves by merely uttering platitudes and pursuing a wishful do - nothing policy towards this important section of the nation the reactions and the repercussions will be serious. Lenin himself quoted Engels to the effect that socialism having become a science must be studied and he agreed with Kantsky that the vehicles of science were not the proletariat but the bourgeois intelligentsia.

Thus the contest is evidently between constitutionalism and dictatorship (Left or Right) because the former advocates Government not of men but of law. Communism is enveloping the countries of South East Asia. The latest developments in China leading to the dramatic success and consolidation of the communists is a pointer to India. A country may be able to eliminate its communists. But



the threat of communism will always be there. If India is to escape this tidal wave the approach should be positive. Barricades of economic equality and social justice should be erected at once. Delay will be construed as denial. As General Eisenhower stated, "The supporters of modern democracy must annul communist appeals to the hungry, the poor and the suppressed with practical measures for the elimination of social and economic evils that set men against men." The policy and the programme should be inspired by a juster estimate and generous appreciation of the situation and inspire the masses. It is imperative that our leadership should be calm in the midst of calamity, hopeful under depressing conditions and be sure of eventual emergence and triumph. But self-confidence is the very foundation of achievement. The future belongs to those who look ahead unafraid and with determination to do their duty in the face of difficulties. A constitutional co-operative system of WORLD GOVERNMENT conditioned by working compromises varying according to practical requirements of different countries is the only solution for all the difficulties. A new outlook

consistent with human freedom and national independence to enable us to live in harmony and peace amidst differences is urgently needed. It remains to be seen that how the Indian leaders will face the situation and discharge their duties which they owe not only to Indian posterity but also to the cause of democracy and constitutionalism.

## Chapter XLI

### CONCLUSION

A brief survey of the sweep of Indian Constitutionalism from the earliest times upto the inauguration of the New Constitution is no true and complete index of its character and composition. Every phase is relevant and important in its own way. Lengthy treatises can be written on every period and aspect of the subject. It would pass the wit of man whatever be his enthusiasm to tap all sources of information from age to age. The more one reflects and looks back, the more vividly he feels the limitations. But the scope of this book is to give a resume of the subject. Some of the very important landmarks might have



been missed inadvertently or treated unevenly. Very naturally the developments since the dawn of Freedom loom large, though they may come to occupy little or no space in the pageant of history. The developments are too near and striking, at any rate for the time being, to be ignored. They are of living interest, importance and concern. In fact the reactions and repercussions are keenly felt in every day life. It is indeed very difficult if not impossible to take an objective view of the situation. Dean Inge once said, "To write a Book of 300 pages about one's own country is obviously to embark on an adventure where Angels might fear to tread." Evidently it is much more difficult to attempt a sort of stock-taking of Indian constitutionalism during its long and chequered history.

Every possible attempt is made to keep an open mind in describing the developments. At the same time an open mind need not be empty. Conclusions arrived at by an observer however scientific he may claim them to be are never purely objective and they are largely coloured by his prepossessions and prejudices either inherited or acquired by study and personal contact. A writer generally presents one

aspect of a case where as every case can be seen from several points of view all of which are probably correct by themselves but not correct at the same time and under the same circumstances. Constitutional issues are extremely subtle and admit of differences of opinion. A devotee of truth must always hold himself open to correction. As soon as an error is discovered he must confess it at all costs. Neither infalliability nor perfection is claimed for the views expressed herein. The value of the work has to be judged by the degree of impartiality and detachment displayed by the author.

“Forecasts in public affairs” as Llyod George pointed out “are most risky and they hold good only for a fortnight.” It is said that the world thought moves in a cycle. If that theory is correct, the cycle of representative government seems to have started in India, long before it reappeared in the democracies of the West. Now India is again returning to the lap of democracy. Democracy involves a generous trust in human nature and a belief that an average man aims at justice and righteousness in political action, economic relations and social life. It also implies man’s



capacity for improvement. At the same time it is no guarantee against mistakes. Under a democracy opinions may alter, conventions may change, traditions may rise and fall, but constitutionalism cannot be discarded under any circumstances. It is hoped that in spite of the trials and the tribulations, India with pride in her traditions, strength in her beliefs and faith in her future will ultimately prove to be a model and a marvel and continue to guide and inspire generations yet unborn.

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